Local Government and Administration In Louisiana

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To
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FOREWORD

The background of local government and administration in Louisiana is significant. It is interpreted in the chapters of this *Study* which deal with Louisiana under Spain and France and the United States. The long story of local government and the growth of local government administration is the record of the working out of democratic ideas in government. It is then of much importance to have a complete survey of the local government institutions of a great state like Louisiana, whose historic traditions represent cultural and social influences which contribute substantially to civilization in the United States.

The crisis in democratic government, which is everywhere and in all lands acknowledged, has profoundly affected the agencies and instrumentalities of government. The need for change and constitutional reform is seen as plainly in the administration of local government as in the more spectacular fields of national government and international affairs. In the past few years local government and its administration has been studied more seriously by competent leaders in public affairs and by political scientists than at any other time in the nation's history. There is a keener appreciation of the constant relationship between the citizen and his local government, and also of the tremendous part played in national life by the institutions of local government and administration. The American way of life is closely joined with the history of the local government institutions through which the spirit of the people has defined itself from colonial days to the now complicated governmental machinery of the twentieth century. Alert and continued study of the problems of local government goes on throughout this nation, and this is proof that the pioneering spirit of change and experiment in government is yet a powerful force in shaping the destiny of the United States.

This present *Study* is the most scholarly and substantial contribution to an understanding of Louisiana local government and administration that has been made by any writer. Professor Carleton has laid the necessary foundation for future studies in this field in Louisiana, and his book takes the first place in importance and significance. With patience and skill he has told the story of the organization of local government and in an authoritative way explained how local government is administered in Louisiana. But more than this he has forcefully revealed the vast extent to which the lives of the people and the daily business of the state are directly involved in the process of local government administration. The people have put an almost overwhelming burden upon the tax-supported agencies of their own creation. Professor Carleton says directly that if there is to be efficient and adequate functioning of the agencies of local government and administration they must be changed to meet the expanding needs of citizens living in the twentieth century. These needs are no longer simply those of police protection; but are varied in scope and change with each generation. Government is a changing institution and no where is this truth more to be applied than in the field of local government and administration in which Professor Carleton has made so real and so scholarly a contribution. The needs of Louisiana require an intelligent understanding of the function of governmental agencies in a democracy. The increasing intent of all agencies of government must be to create the conditions of security and welfare for all the people, and on this basis is the authority and the only hope of the democratic state.

CHARLES W. PIPKIN

PREFACE

Woodrow Wilson is said to have made the statement at one time that "No man knows enough to write a whole book." This appears to be particularly true of a study intended at once as informational, analytical, and critical, and especially so in the latter sense. Research students, while they may appear to have their own original ideas and sense of values, owe much more than they are sometimes willing to admit to associates and former teachers and colleagues. It seems fitting, then, in view of the fact that this is the first published work of the writer, to acknowledge the influence exerted, consciously or unconsciously, by men with whom he has been or is now closely associated in a friendly, professional, or administrative way.

The interest of President James Monroe Smith in stimulating and encouraging creative work and writing by members of the faculty of Louisiana State University deserves special mention, for the *Studies* of the University are products of that interest. To Dean Charles W. Pipkin, of the Graduate School and Editor of the *Studies,* thanks are due for his interest in making this one of the *Studies.* Special mention should be made of Dr. A. T. Prescott, former Head of the Department of Government of Louisiana State University and now Head of the Department of Government of the University of the South, whose kindly interest and material encouragement made possible the first attempt at research in this field.

Last but not least, the writer is indebted beyond measure to a former group of teachers, scholars, friends, and colleagues with whom he spent three of the most beneficial years of his academic life as an assistant in the Department of Political Science of the University of Illinois. This study is the result of a suggestion by Professor John A. Fairlie that

a former brief effort be expanded to cover the whole field of local government and administration in Louisiana. As major professor and friend, association with him was at once stimulating and valuable. Professional and friendly relations with the other members of the Political Science Seminar also resulted in many ideas and conclusions entirely too numerous to mention.

It was the original purpose of the author to have this study ready for publication during the latter part of 1934, but one regular session and three special sessions of the state legislature within the rather short period of six months made necessary considerable revision. After the study was in press another special session of the legislature enacted legislation of vital importance to local government in Louisiana. It was too late, however, to include such material in this study. Consequently, the period covered ends with the last session of the legislature in 1934.

A problem of considerable importance was that of using the hurriedly collected and compiled information and statistics of the depression years with those of the more normal pre-depression years, and of considering the problems of the depression years with those of a more permanent character. The author decided to base this study primarily upon the pre-depression period, including only such contemporary material as seemed necessary, for it appeared useless to attempt to compare the two periods or to draw conclusions of any permanent value while there was still so much change and fluctuation of policy in the process of treating local problems. Forces too numerous and too complex to evaluate at a glance were and are at work. It is the desire of the author that in the near future, after the effects of the depression years have become more apparent and after governmental attempts to offset those effects have been given an opportunity of proving their value or inadequacy, to revise this work and examine the period in question in greater detail.

If this study possesses any value or merit, it is largely because of the facts set forth above; if it contains errors in fact or judgment, the writer only is to blame.

PART I

CHAPTER I

Introduction

This study has three purposes. The first is to determine the effect on local institutions of the varied historical background of Louisiana. In the second place, local government and administration is described as it exists in Louisiana today. Finally, by means of analyses and comparisons, local institutional defects and deficiencies are noted, with suggestions for their improvement. This work is the result of that three-fold investigation.

The chief sources of information have been the state and national constitutions, statutes, court decisions, and various official reports. Works of an unofficial character have been used to supplement official material, particularly in tracing the evolution and development of local institutions. The organization and work of a few local governments have also been observed and their reports examined.

An historical approach has been selected as the best method of explaining the terminology and organization peculiar to Louisiana. At the same time it is shown that local forms and functions do not differ fundamentally from those found in other states.

A functional treatment of the whole subject is adopted, since all local areas of Louisiana have practically the same legal bases, differing only in degree. Parishes and municipalities, in the main, have practically identical powers for local government purposes. Special taxing districts, while they predominate in the parishes, are also found to a limited extent in municipalities, and are for the most part extensions of parochial or municipal activities. For state purposes, the parish is the main unit of administration, municipalities and special taxing districts playing a distinctly minor role.

The police jury is the governing authority in all parishes except New Orleans. It resembles the county board of supervisors in part and the county commission form in part in that its members are elected from wards but exercise no individual or purely local powers. The commission form of parish government is optional but has never been adopted.

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Municipalities are classified in general, according to population, but within these classes there is considerable local freedom as to the form of government and its exact organization. Both police juries and municipal governing bodies exercise an extensive appointing authority and, excluding what may be termed judicial or law enforcing officers, practically all local officers are on an appointive basis. A separate chapter is devoted to the government of New Orleans, since an elected commission council governs the area both as a parish and as a municipality.

For state and local purposes alike, the activities of parishes and municipalities are explained in the administration of justice; in suffrage, offices, and elections; in education; in providing highways, roads, and streets; and in other local functions and activities. Special taxing districts are noted in the functional chapters and are also assigned a separate chapter because of their growing number and importance. The various defects noted throughout the study are summarized in the conclusion, and suggestions are made for their correction.

The official relations of the state to its local subdivisions are briefly explained throughout the study, and in some instances a more detailed treatment of those relations is made in order to emphasize features of major importance.

PART II

CHAPTER II

Louisiana Under France

The customs and usages of any politically organized people can be traced to historical sources; and the policies and purposes of such an organization may likewise be said to be the realization of desires belonging to older generations. For this reason the historical development of local government in Louisiana is important, since by examining the past it is possible that the present may be better understood. The governmental development of Louisiana as a colony, as a territory, and as a state, is marked by a varied historical background. State and local institutions, political areas, and codes of law, still reflect the early influences of French and Spanish organization and procedure.

The province, or colony, changed hands five times before becoming a territory of the United States. Louisiana passed from the King of France to Crozat in 1712, from Crozat to the Western Company in 1717, from the Western Company back to the King of France in 1731, from Louis XV to Spain in 1762, from Spain back to France in 1801, and from France to the United States in 1803. In a later day and age governmental changes would have been frequent and varied; it was fortunate that during this period such change was not resorted to. The frequent shifting of the sovereign power was accompanied in each case by an unusually stable governmental organization. This stability may have been due to a general respect for law and order. At no time was there ever any real bloodshed or violent revolt, the only revolutionary incident being the quiet withdrawal of Ulloa after a popular demonstration by the French against their first Spanish governor.

Early Exploration and Settlement

The period of exploration started in 1682 when La Salle sailed down the Mississippi River and claimed all the lands drained by this stream for the King of France. "The name, Louisiana, was first applied to all acquisitions for the King of France on the 'Mechechebe' River, extending from its

mouth into the wilderness, separating them from the English possessions on the Atlantic, and into the unexplored territory stretching to the Pacific and the country of the Aurora Borealis. Some twenty sovereign states have been carved from this imperial domain.'"[1] There soon followed a period of colonization and France founded settlements on the Mississippi River and on its tributaries. In 1699 a French settlement was formed at Biloxi. Natchitoches was settled in 1714, New Orleans in 1718, and Baton Rouge in approximately the same year. The first settlers in Pointe Coupeé came from Kaskaskia and Vincennes (Illinois), between 1708 and 1712.

From 1699 to 1712 Louisiana was governed by three men. A lieutenant of the king, at the head of military and naval affairs, exercised the functions of governor. A commissary of finance, or commissioner, acted as auditor, treasurer, storekeeper, and general manager of the colony. The third official was the curé, who controlled and directed the ecclesiastical side of the government.[2] Since exploration occupied the attention of the officials in charge of the province, the form of government was one of extreme simplicity and calculated only to serve the needs of the time. For this reason there were no courts of law established in the colony during this period. Cases arising in any one of the three spheres of action were tried by the head of that department. The extreme simplicity of the governmental organization fostered the centralization of power and authority in the hands of the heads of the three departments. Later governmental institutions under France and Spain, both provincial and local, also showed this centralization of power.

Louisiana as a Charter Colony

Civil government began in Louisiana in 1712 with the Crozat grant given by the King of France. The latter constituted Crozat the overlord, lessee, or manager of the colony of Louisiana. In this grant Louisiana received the Custom of Paris, and the history of its legal institutions therefore began here.[3]

[1] *Biographical and Historical Memoirs of Louisiana*, p. 28.
[2] Dart, H. P., "Courts and Law in Colonial Louisiana," *Louisiana Historical Quarterly*, Vol. IV, No. 3 (July, 1921), p. 259.
[3] Dart, *loc. cit.*, p. 259. This article gives an excellent treatment of the establishment of the Custom of Paris in Louisiana.

From 1712 through 1731 Louisiana was under the control of chartered companies. Crozat's charter extended from 1712 to 1717. In the latter year the colony was taken over by the Western Company and continued under this organization through 1731. Louisiana then became a royal colony. We may safely begin the development of local governmental institutions with the period of charter control, for prior to 1712 the French colonization of Louisiana was restricted almost entirely to the region around Biloxi, although exploration still continued.

In general, the government of the province of Louisiana under the chartered companies was essentially the same as before this transfer was made. During this period French provincial government itself, in the homeland, was marked by an extreme centralization of power. The local institutions of Louisiana grew out of a unified central organization instead of the central government being a product of the unification of its many subdivisions, as was so often the case in other countries.

The superior council, the first law court in the province, was created with the grant of the Custom of Paris for the administration of Louisiana. The council was established for three years and was composed of a lawyer, who was the first councillor, an attorney (or procureur) general, and from three to five others who were laymen. The attorney general was the legal advisor of the government and also the lawyer of the people. This principle of a mixed tribunal was never changed under French control, but the membership was sometimes reduced or increased in number, either by the council itself or by royal decree. The ordinance under which the council operated was very flexible, conferring authority in detail, but leaving much to the discretion of the judges. This court was granted original, exclusive, and final jurisdiction over all of Louisiana, and in 1719 was made a permanent establishment.[4] The council, as composed by royal edict in 1716, consisted of the first councillor, the attorney general, the governor, the commander of the royal troops, and the commissioner. A clerk of the court was also provided. These officers were nominated by the company and were confirmed by the king. The general administration of the province was

[4] Dart, *loc. cit.*, pp. 261 ff.

entrusted to the governor, the commissioner, and the commander of the troops.[5]

In 1717 the Western Company secured the charter and the province passed into its hands. Until 1731 Louisiana was ruled by this company which named the judges and all local officers. The king merely confirmed appointments or recommendations.[6] All legal processes, however, ran in the name of the king and were sealed with the king's seal. In 1719 the king, by royal edict, modified the composition of the superior council. All directors of the company residing in the province, the governor, the two lieutenant governors, the attorney general, and four other persons composed the council.[7] Gradually, in the administrative field, the governor obtained control of the army and public policy. At the same time the commissioner was consolidating the other administrative functions under his control. He acted as treasurer (which included the expenditure of money, the distribution of merchandise and the contributions for the support of the colonists, and the presents to the Indians), and had charge of the establishment of forts, and the upkeep of the troops.[8] The superior council, created primarily as an advisory group for the governor and as the highest court in the province, lost most of its original jurisdiction and became almost entirely an appellate court under the modifications of 1719. It was required to meet at least once a month; in all civil suits the quorum was fixed at three members, and in criminal affairs the quorum was five members.[9]

Since the outlying population of the province had increased considerably in number, it was found necessary to establish inferior courts and to appoint the directors of the company, or their agents, as the judges in the various localities where they resided. Each one of them, with two of the chief men of the vicinity, exercised jurisdiction over any civil suit. With the assistance of four such men each of these local judges had jurisdiction over certain criminal cases, providing, however, that full reports of these disputes were submitted with all available evidence and testimony to the superior council. Included in the royal edict of 1719 was a

[5] King G., and Picklen, J. R., *History of Louisiana*, p. 78.
[6] *Ibid.*, and Dart, *loc. cit.*, p. 262.
[7] Gayarré, C. E. A., *History of Louisiana*, 1885, Vol. I, p. 252.
[8] Dart, H. P., "Politics in Louisiana in 1724," *Louisiana Historical Quarterly*, Vol. V, No. 3 (1922), p. 298.
[9] Gayarré, *op. cit.*, Vol. I, p. 282.

provision that justice was to be administered without cost to the parties concerned. For this reason there were no lawyers residing in Louisiana except those of the superior council. This provision, together with the prescribed duties of the attorney general, indicate that France was solicitous concerning the general welfare of her subjects in far-off Louisiana.[10]

In 1721, by decree, Louisiana was divided into nine territorial districts, thus providing a new unit of administration and justice. They were New Orleans, Biloxi, Mobile, Alibamons, Natchez, Yazoo, Natchitoches, Arkansas, and Illinois. There was a commandant, or commander, and a judge for each district. The commandant exercised administrative powers only and was considered the local agent of the governor. The judge had civil and criminal jurisdiction over all cases arising within his particular district, but appeals from his decisions could be taken to the superior council. As stated in the decree, this arrangement was established so that justice would be within easier reach of the colonists.[11] On or about the same date three ecclesiastical parishes were created. The eastern parish consisting of Alabama, Toulouse, Biloxi, and Mobile, was given over to the Carmelite fathers. The Mississippi from New Orleans to Chicago was given to the Capuchin fathers. The Wabash and the Ohio Valleys were given to the Jesuit fathers.[12]

Both chartered companies relied on trade to and from the province to produce a dividend and were not allowed to tax the colonists directly. In order, however, to facilitate the building of churches and hospitals the Western Company was authorized to levy a tax of one cent upon every acre of land, and a tax of five livres upon every slave, providing that the sums realized were dedicated to such improvements.[13]

Louisiana as a Royal Colony

In 1731 Louisiana became a royal colony. On May 7, 1732, the superior council was reorganized by letters patent and was composed of the governor, the commissioner, the lieutenant governors, and the attorney general. The king was directly interested only in the appointment of the gov-

[10] *Idem.* Also see Dart, *loc. cit.*, p. 264.
[11] Gayarré, *op. cit.*, p. 278.
[12] Biographical and Historical Memoirs of Louisiana, *op. cit.*, p. 25; Fortier, Alcée *History of Louisiana*, 1904, Vol. I, p. 107.
[13] Gayarré, *op. cit.*, Vol. I, p. 291.

ernor, the commissioner, and, possibly, the attorney general.[14] Other appointments, either to the council or to administrative posts, were made by the king through the governor.[15] The governor was chief executive of the colony, commander of its armed forces, and director of its public policy. The commissioner was the financial officer of the government and an ever present check upon the governor. The office of lieutenant governor was for the most part honorary, but occasionally that officer was given administrative duties to perform. The attorney general was a judicial officer who acted as legal advisor to the government and at the same time was champion and guardian of the rights of the people. His legal opinion was rendered in either capacity. As attorney for the people he investigated and reported any violations of, or infringements upon, the people's rights. The governor and commissary, acting together, made grants of land.[16]

All cases of a civil nature were carried to the superior council on appeal by petition or by complaint. For the most part these petitions and complaints were written out by the clerk of the court. It seems that the office of clerk was bought and sold and the occupant held it for life.[17] At least three members of the council had to agree in decisions of a civil nature, and five had to agree in all criminal cases. Because of the flexible nature of the ordinance governing the superior council, the number of members varied from time to time, never having less than five members, and sometimes having as many as seven. The jurisdiction of the court was at first original, exclusive, and final; but with the appointment of local judges it became almost entirely appellate. Those cases of an original nature, however, were tried orally and without reducing the evidence to writing. Appeals, of course, were reduced to writing.[18] The "huissier," or sheriff, of the court served all complaints and petitions on the persons designated. There was no expense to the litigants for judges or lawyers. The only costs paid by parties to a suit were the clerk's and possibly the sheriff's expenses, which were fixed by the court from time to time.[19]

[14] *Ibid.*, p. 455.
[15] Fortier, *op. cit.*, Vol. II, p. 4.
[16] Dart, *loc. cit.*, p. 268; Gayarré, *supra.*
[17] *Idem.*
[18] Dart, *loc. cit.*, p. 268.
[19] *Ibid.*, p. 265.

The first local officers of any real importance were the commanders, or commandants, one for each settlement or district. Their duties were purely administrative in character and consisted of the command of the small body of troops at each post, regulating relations with the Indians, the supervision of all travelers, and acting as the governor's agents in carrying out the public policy. The establishment of local judges in 1721 had rounded out a very centralized and efficient governmental organization. The commanders, usually military men, were appointed by the governor. The judges were appointed by the governor on recommendation by local competent persons.[20] Syndics, exercising the jurisdiction of justices of the peace, were appointed by the governor in many instances to assist the commandants.[21]

The colony under royal control was supervised by the French minister of marine affairs, to whom the secretary of the superior council submitted reports on colonial questions.[22] Police regulations and ordinances were designed and promulgated by the governor on his own initiative. The superior council, acting in its advisory capacity, could, however, call matters to his attention. In October, 1743, an ordinance was published requiring the planters to have their levees constructed, or in a safe condition, by January 1, 1744, under penalty of forfeiting their lands to the crown.[23] Governor Vaudreuil issued the first police regulations for the city of New Orleans, restricting the number of drinking saloons and the sale of liquors, and adjusting the civic relations of negroes.[24]

Simplicity and centralization, then, seem to have been the dominant characteristics of provincial and local government, and with them went a corresponding degree of efficiency so apparent in many monarchical and paternal organizations. The spirit of a government, however, determines its quality, for a similar organization, but under a different flag, showed the true principle of Spanish monarchical government.

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[20] *Ibid.*, p. 268.
[21] Gayarré, *op. cit.*, Vol. II, p. 248.
[22] *Publications of the Louisiana Historical Society*, Volumes I-V, p. 46; Gayarré, *op. cit.*, Vol. II, p. 65.
[23] *Ibid.*, Vol. II, p. 20.
[24] King and Ficklen, *op. cit.*, p. 109.

CHAPTER III

Louisiana Under Spain

On November 3, 1762, France ceded all the country known under the name of Louisiana to Spain.[1] It was mutually understood that many of the local institutions and usages would be continued, but the revolution against Ulloa, the first Spanish governor, gave the home government a sufficient excuse to order a general reorganization of the provincial government. To Alexandro O'Reilly, captain-general of the Spanish armies, was delegated this task.

In two proclamations, issued November 25, 1769, O'Reilly abolished the old French organization and created a new political and military unit which he called the Province of Louisiana. At the same time he promulgated rules for the new government and a code of laws for the people. The general form of government created was on the model established for the West Indian possessions of Spain and offered no opportunity for the development of popular institutions.[2]

The Central Administration

The highest executive power in the Spanish western possessions was vested in a captain-general residing in Cuba, to whom the governor of the colony was subordinate. The governor was clothed with full military and civil powers, and his authority within these limits was practically supreme since he represented the person of the king. Nearly all legislative power was vested in the governor, as he issued instructions for the regulation of proceedings in civil and criminal cases, such proceedings being conducted according to the usages of Castile and the Indies. He promulgated the laws on being inducted into office in a kind of inaugural address called the "bando de buen gobierno," in which he set forth the principles governing his administration and called attention to the new ordinances and police regulations which he intended to enforce. In his judicial capacity he had a

[1] Gayarré, *op. cit.*, Vol. II, pp. 91 and 181 *ff.* The boundary situation south of the Ohio River is not very clear following the transfer of Illinois settlements from France to Great Britain in 1763. Spain claimed all territory in dispute but did not seem to exercise much authority north or east of St. Louis, nor in what is now Kentucky and Tennessee.

[2] Dart, *loc. cit.*, pp. 273 *ff.*

special counselor, the auditor of war, or, as he was sometimes called, the assessor of the government.[3]

An intendant had the administration of the revenues, and had control of all that pertained to the naval and commercial departments. The office was independent of and separate from the general government. In addition to financial duties the intendant also inspected lands and estates. A contador, or comptroller, kept all the accounts and documents with respect to receipts and disbursements, and may be compared with our governmental auditors of today. The treasurer was the cashier of the province. The interventor superintended all public purchases and sales. The administrador managed all customs-house matters. In addition to these officers there was a collector and a special notary for the customs-house. These officials controlled the commerce of the province and managed its finances, but they were subordinate to the Royal Hacienda (Treasury) in financial affairs, as the latter regulated the tariffs, taxes, and other fees, and controlled the general income and expenditures of the province.[4]

An auditor of war and assessor of the government was the legal advisor of the governor. An auditor of the intendancy was the legal advisor of the intendant. Because of a scarcity of men learned in the Spanish law, the auditor of war frequently acted as the counsel, not only of the governor, but also of the intendant, of the cabildo, and of all other public officers.[5]

A surveyor general was provided by O'Reilly, his salary being paid out of the crops of the inhabitants. There was a harbor master, an interpreter of the French and English languages, an Indian interpreter, and three notaries public.[6] Every officer who received a salary of more than three hundred dollars a year was appointed by the crown. Inferior offices were appointed to, or were used as gifts, by the governor or by the intendant, in their respective departments.[7] A judge of residence, an officer peculiar to the Spanish colonial organization, acted as a censor of public officials. His function was to investigate the official conduct of all

[3] Biographical and Historical Memoirs of Louisiana, *op. cit.*, p. 85; Dart, *loc. cit.*, p. 274; Fortier, Alcée, "Old Papers of Colonial Times," *Publications of the Louisiana Historical Society*, Volumes I-V, pp. 6-25.
[4] Gayarré, *op. cit.*, Vol. III, pp. 5-6; Dart, *loc. cit.*, p. 274; Robertson, J. A., *Louisiana Under the Rule of Spain, France, and the United States*, Vol. I, p. 178.
[5] Gayarré, *op. cit.*, Vol. III, pp. 5 and 6.
[6] *Idem.*
[7] *Idem.*

public officers after the termination of their stay in office, and to make a full and formal report to the Council of the Indies, the governing agency of all the western Spanish possessions.[8] A lieutenant governor was stationed at St. Louis to aid the governor in performing his civil and political duties.[9]

The Judiciary

Because of the lack of Spanish lawyers in Louisiana, O'Reilly issued a code of Spanish law in 1769 compiled, digested, and annotated by de Urrustia and Felix Rey. All actions concerning civil and criminal suits were described. Witnesses were examined by the judge in secret. In all appeals to Havana the original record was transmitted. Executory processes, testaments, and crimes and their punishment, were also treated. Two irreproachable witnesses were necessary to convict for a crime.[10]

The governor exercised judicial powers in civil and military matters throughout the province. The court of the lieutenant governor had jurisdiction over civil matters only. The intendant's court had jurisdiction in admiralty and in fiscal matters. The vicar general exercised authority over all affairs arising in the ecclesiastical department. These officers had, it seems, exclusive jurisdiction in their respective courts. The governor and the intendant were assisted by an auditor or assessor whose opinion they might, on their own responsibility, disregard. The governor could not pardon criminals. The court of the provincial alcalde had jurisdiction in all criminal cases outside of New Orleans. He was chief of police and judge at the same time, and there was no appeal from his decisions. The office of procurador, or attorney general, was a pure monopoly as he appeared in every case. His fees were taxed, as part of the costs, to each suit. He was not, as may be supposed from his title, the prosecuting officer of the crown. His duty was to propose such measures as the interests of the people required, and to defend their rights. This was the theory, even though the practice was different. In addition to the above duty

[8] Biographical and Historical Memoirs of Louisiana, *op. cit.*, p. 35.
[9] Robertson, *op. cit.*, Vol. I, p. 185.
[10] Dart, *loc. cit.*, pp. 278-287.

he was required to recover debts and revenues due the treasurer of New Orleans.[11]

In New Orleans there were two ordinary alcaldes, or judges, with civil and criminal jurisdiction over all affairs within the city. They were judges by and with the advice of legal counselors, for an assessor rendered to each judge an opinion in writing concerning each case which the alcaldes were almost bound to accept. They were laymen, not trained lawyers. These judges exercised full jurisdiction throughout their prescribed limits except over those cases arising under the special courts previously described.[12]

In the outlying districts the commandants, administrators appointed by the governor, exercised a limited civil jurisdiction subject to appeal to the governor's court. They were required to take all available evidence in criminal cases and send it to the central government in New Orleans. When so ordered they sent the accused to New Orleans for personal questioning and trial.[13]

All death sentences had to be ratified by the captain general in Cuba, except those by the provincial alcalde. Small cases were sometimes decided by hearing both parties viva voce, but all important cases were tried by the system of petition, replies, and so on, in accordance with the intricate system of Spanish law. Appeals lay to Havana in cases where the sums involved exceeded three hundred and thirty dollars, if applied for within five days after the date on which the decision was rendered. The cabildo of New Orleans had appellate jurisdiction of civil appeals from the courts of the ordinary alcaldes.[14]

The Cabildo

O'Reilly created a municipal council, known as the cabildo, for New Orleans, a form of local government originating in Spain. This municipal institution had been extended to the largest communities in the western possessions.[15] The cabildo was, first of all, a local municipal council composed of the governor, six regidores, or councillors, appointed by the

[11] Robertson, *op. cit.*, Vol. I, pp. 206-208. See also the article by Dart, *loc. cit.*, pp. 278-287.
[12] Gayarré, *op. cit.*, Vol. III, p. 8; also see Dart, *loc. cit.*, pp. 278 ff.
[13] Robertson, *op. cit.*, Vol. I, pp. 215-217; Gayarré, *op. cit.*, Vol. III, pp. 6-26.
[14] Robertson, *op. cit.*, Vol. I, p. 208; Dart, *loc. cit.*, pp. 278-281.
[15] Gayarré, *op. cit.*, Vol. III, p. 8; Fortier, *op. cit.*, Vol. II, p. 4.

governor, two ordinary alcaldes or city judges, an attorney or procurador general, and a clerk. The office of regidor was sold to the highest bidder, but the governor could veto the purchase or assignment. Each year the regidores divided among themselves certain offices of honor and profit. They selected from their own number an alferez royal, an alcalde mayor provincial, an alguazil mayor, a depository general, and a receiver of fines. But, such selection was always subject to the approval of the governor. The alferez royal was the keeper of the royal ensign. The duties of the provincial alcalde have already been described. The alguazil mayor exercised the functions of a civil and criminal sheriff, and acted as the guardian of the peace of the city of New Orleans. His main source of revenue was in the form of fees derived from the prisoners in the jail, of which he had charge. The depository general performed the duties of the city treasurer. The title of the receiver of fines indicates his duties.[16]

The cabildo, sitting as a council, elected each year a manager of rents and taxes of New Orleans. His title was mayordomo in proprios, and his position may be compared with that of our modern commissioners of public works and streets, with the duties of comptroller added.[17] The two alcaldes, or city judges of New Orleans, and the attorney (procurador) general have already been described in that part devoted to the judiciary. They, too, were elected annually by the cabildo. Another important officer was the clerk of the cabildo who also bought and paid for his position.[18]

The cabildo had, possibly, three major functions. It was a quasi-deliberative, a quasi-judicial, and an administrative body. As a deliberative body it advised the governor and made suggestions from time to time concerning the public policy. In the second capacity it sat as a court of appeal in civil cases only, considering those cases appealed from the court of the ordinary alcaldes. But the council itself did not hear these appeals. Two regidores were appointed to confer with the trial judge, and the majority opinion prevailed. As an administrative body the cabildo looked after

[16] *Ibid.*, and also Dart, *loc. cit.*, pp. 278 ff.
[17] *Idem.*
[18] *Idem.*

the affairs of New Orleans, but always in subjection to the governor.[19]

There was no regular police force for the enforcement of law in New Orleans until Baron Carondelet, Governor of Louisiana, issued a communication to the cabildo in 1792, recommending that they make provision for lighting the city and employing watchmen. To meet these extra charges a tax was laid on every chimney in the city.[20]

Rural Local Government

For the better administration of local affairs O'Reilly divided the province into eleven districts, over each of which he placed a commandant who was usually taken from the army or the militia. These districts were Illinois, Natchitoches, the first half of the German Coast (Parish of St. Charles), the second half of the German Coast (Parish of St. John the Baptist), Pointe Coupeé, Opelousas, the Iberville Coast, the Fourche of Chetimachas, Kabahan, Rapides, and St. Genevieve.[21] Including Orleans, there were twelve districts.

For ecclesiastical purposes the province was divided into twenty-one parishes, each supposedly with a parish priest in charge. As a matter of fact there were only nineteen members of the clergy for the whole province.[22] It is interesting, however, to note this division into parishes. The districts created by O'Reilly did not long survive as units of local government, mainly because they were too large and because the population increased so rapidly under the territorial organization of Louisiana after its purchase by the United States. For these reasons the district, or county, as an area for local government was ultimately discarded, and the parish was adopted as the local unit.

Commandants had the rank of captains and exercised a mixed civil and military jurisdiction. The duties of the commandant were to superintend the policing of his district, preserve the peace, and examine the passports of all travelers. He was to prevent smuggling, to certify that all lands peti-

[19] Gayarré, *op. cit.*, Vol. III, pp. 8-9; Robertson, *op. cit.*, Vol. I, p. 315; Stoddard, Major Amos, *Sketches Historical and Descriptive of Louisiana*, pp. 274-280; Dart, *loc. cit.*, pp. 278 ff.

[20] Gayarré, *op. cit.*, Vol. III, p. 318.

[21] Stoddard, *op. cit.*, p. 274; Fortier, *op. cit.*, Vol. II, p. 9.

[22] Martin, Francois-Xavier, *History of Louisiana from the Earliest Period*, 1882, p. 303.

tioned for by the inhabitants were vacant before they were granted, and, when necessary, to put the owner in actual possession. He was a notary public and was required to register all sales of lands and slaves. He even made the contracts necessary for these transactions. He acted as a sheriff in that he levied executions on property, certified the sale, and collected the proceeds. He also took inventories of the property of intestates. His compensation for performing these duties consisted of his salary as an officer in the army or in the militia, a small allowance for stationery, and the fees allowed to him by law.[23]

As a judicial officer the commandant decided all controversies in civil suits where the amount involved did not ordinarily exceed twenty dollars. The amount in question varied from time to time, sometimes being as much as a hundred dollars. In cases involving more than this amount, he took down the testimony and sent the papers to the governor. He likewise sent to the governor the transcript of the evidence in criminal cases. He had no authority to judge criminal cases, but he was empowered, however, to arrest and imprison the accused until the governor gave his decision. In his judicial capacity the commandant could also perform the marriage ceremony.[24]

By proclamation in 1792, Baron Carondelet, Governor of Louisiana, provided for the appointment of syndics, or justices of the peace. They were chosen from the most prominent planters, were appointed by the governor, and were subordinate to the commandants of their districts. Syndics were established approximately nine miles apart and were required to make weekly reports of their actions to the commandants. These syndic areas may have been the beginning of parish wards and special districts. Syndics had charge of the construction and maintenance of levees, roads, and drainage ditches, exercised supervisory powers over travelers and negroes, and decided the lesser civil cases where the amounts involved were not large.[25]

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[23] Robertson, *op. cit.*, Vol. I, pp. 210-217; Gayarré, *op. cit.*, Vol. III, pp. 6-26, 386; Fortier, *op. cit.*, Vol. II, p. 9; Stoddard, *op. cit.*, pp. 274-280; Porteous, L. L., "Governor Carondelet's Levee Ordinance of 1792," *Louisiana Historical Quarterly*, Vol. X, No. 4, pp. 513-514.

[24] *Idem.*

[25] Gayarré, *op. cit.*, Vol. II, p. 248, Vol. III, p. 351; Porteous, *loc. cit.*, pp. 513-514; "Regulations to be observed by the Syndics and Alcaldes of Baton Rouge," *Louisiana Historical Quarterly*, Vol. IX, No. 3, pp. 405-410; Stoddard, *op. cit.*, pp. 274-275.

No local taxes were collected, but each inhabitant was required to make and repair roads, bridges, and levees under the supervision and direction of the local syndics. During periods of overflow and high water each planter and all of his slaves were subject to call for work on levees, and for the prevention of crevasses. Construction and maintenance work of all kinds was usually carried on in the late summer and early fall when the full quota of men were available for the required number of days of labor on public works.[26]

Spanish provincial government, like that of the French, was centralized, but it was not as simple in organization and structure as was the latter. Neither was the spirit of service and aid manifested by Spanish governmental authorities in the province, as was the case with the French provincial officials. Popular institutions were likewise absent under the Spanish as they had been under the French, and popular ignorance of and prejudice against some of these institutions were responsible for many of the later difficulties of Claiborne while governor of the territory. A partial distribution of power is seen in the central Spanish organization, but there was no separation of powers. Local agencies of the government were responsible to and were controlled by the central organization, and the two were so closely connected as to make a separate consideration of each almost impossible. The political attitude of the inhabitants of Louisiana was of a dormant and latent character. Given the necessary start by the purchase of the territory from France by the United States, democratic tendencies were not slow in forming.

CHAPTER IV

Louisiana As A United States Territory

On November 30, 1803, Laussat, Emissary of France, took possession of Louisiana following the cession of that province by Spain to France in the Treaty of San Ildefonso (October 1, 1800). On December 20, 1803, after our purchase of the territory from Napoleon, W. C. C. Claiborne (former Governor of the Mississippi Territory) took possession of Louisiana in the name of the United States.

[26] *Idem.*

The form of government designed for the Louisiana Territory was set forth in an Act of Congress, March 26, 1804.[1] All executive power was vested in a governor, appointed by the President with the advice and consent of the Senate, who was required to reside in the territory and who was to hold office for three years. He was made commander-in-chief of the militia, was given the power to grant pardons and reprieves, and to appoint and commission all officers, civil and of the militia, established by law and not otherwise provided for. A secretary, appointed in the same manner as was the governor, held office for four years. His duties were to record and preserve all executive records and all legislative acts of the governor and council. Authentic copies of these were to be transmitted to the President every six months. In case the office of governor became vacant the secretary exercised the powers and performed the duties of the governor until further notice.

All legislative powers were vested in the governor and a legislative council composed of thirteen inhabitants of the territory appointed annually by the President. The judicial power was vested in a superior court and in such inferior courts and justices of the peace as the legislature of the territory thought fit to establish. The three judges of the superior court were appointed by the President for terms of four years. Any one of them constituted a court. They had jurisdiction in all criminal cases and exclusive jurisdiction in all those which were capital. They had original and appellate jurisdiction in all civil cases of the value of one hundred dollars or more. Justices of the peace were to be appointed by the President to hold office for four years. A federal district judge was provided to hold court in New Orleans. A district attorney was appointed to act for the National Government in this court and in other courts. Both of these judicial officials were appointed by the President. Jury trials were provided unless waived by both parties to the suit.

From the time Claiborne had established a provisional government until the congressional plan for organizing the

[1] Thorpe, Francis Newton, *The Federal and State Constitutions, Colonial Charters, and other Organic Laws of the United States, Territories, and Colonies*, Vol. III, pp. 1364 ff.

In 1812 the population of the state was about 75,000, of whom one-half were slaves; in 1820 it was 153,407; in 1830, 215,000; in 1840, 350,000; and in 1860, 708,000. See Ficklin, J. R., *History and Government of Louisiana*, p. 111.

territory had arrived, the citizens of Louisiana had ample opportunity to inform themselves of the government of the Northwest Territory and of the government of the Mississippi Territory. They had also become acquainted with the organization and fundamental principles of the various state governments. In his inaugural address and, previous to that, in his speech delivered when taking possession of Louisiana in the name of the United States, Claiborne had praised the democratic principles underlying the structure of our government; and had, in a measure, promised a degree of democratic control. Colonists arriving from various parts of the United States and desirous of settling in Louisiana had likewise been very optimistic as to the form of government to be established, and as to how soon Louisiana would be admitted into the Union as a state. The citizens of Louisiana were consequently not satisfied with their first form of government. Not only was it strange to them; it also was not what they had been led to expect.

On March 2, 1805, Congress further provided for the government of the Territory of Orleans.[2] The President was authorized to establish a government similar in all respects to that of the Mississippi Territory, conforming to the Ordinance of 1787 for the Northwest Territory. The legislature was composed of a house of representatives of twenty-five members elected for terms of two years; and a legislative council of five members, appointed by the President out of ten individuals nominated by the house of representatives, to serve for five years. The governor, secretary, and judges of the superior court were appointed by the President with the advice and consent of the Senate—the governor for three years, the secretary for four years, and the judges during good behavior. Except for the changes noted above, the government of the territory was the same as under the Act of March 26, 1804. This form of organization continued until the territory was admitted into the Union as a state in 1812.

Claiborne was sworn into office as Governor of the Territory of Orleans on October 5, 1804, and, in so far as he could, he attempted to preserve the customs and usages of the inhabitants of the territory. Fresh from the Territory of Mississippi, where he had already occupied a similar posi-

[2] *Idem.* With the exception of the Florida parishes, which were added later, the new territory was substantially the same as the present state.

tion of trust and responsibility, he was familiar with the problems arising in a newly organized territory whose inhabitants had long been under a benevolent, if despotic, form of government. The trial by jury, the introduction of the English language into the official walks of life, and the common-law forms of procedure were confusing to say the least, and were protested by the people of Louisiana. This antagonism to American procedures later led to the adoption of a separate civil code of law, and an attempt to adopt a separate criminal code of law.

French and Spanish customs and usages had a habit of cropping out in unusual places. Newly created officials were considered by the inhabitants as exercising all of the powers formerly belonging to the provincial officials they most closely resembled in office and functions. Governmental institutions are not, after all, so very different fundamentally. Whether they represent a monarch of unlimited power, or whether they represent a group of people whose complete sovereignty is unquestioned, has little effect in so far as the powers and duties assigned to those institutions are concerned. The evolution and growth of the political institutions of Louisiana represent a change from despotism to democracy, yet the structure and foundations of the organization itself have not been greatly disturbed.

Political Units

At the first meeting of the legislative council (December 4, 1804) the territory was divided into twelve local subdivisions, or counties. They were Orleans, German Coast, Acadia, La Fourche, Iberville, Pointe Coupeé, Concordia, Attakapas, Opelousas, Rapides, Natchitoches, and Ouachita, and were similar to the twelve administrative districts established by O'Reilly. These divisions differed very much in size and population, and did not long endure except for election purposes and for levying the territorial taxes.[3] Administrative, judicial, and fiscal officers were established for the counties, appointed by the governor. For the most part the same officials were reestablished under later parish organization.

[3] *Acts of the First and Second Sessions of the First Territorial Legislature*, p. 50; *General Digest of the Acts of the Legislatures of Louisiana*, (1804-1827), compiled by Lislet, L. Moreau, Vol. I, p. 287.

On January 26, 1806, the territorial legislature redistricted the territory and divided it into nineteen parishes. They were Orleans, St. Bernard, Plaquemines, St. Charles, St. John the Baptist, St. James, Ascension, Assumption, La Fourche Interior, Iberville, Baton Rouge, Pointe Coupeé, Concordia, Ouachita, Rapides, Avoyelles, Natchitoches, St. Landry, and Attakapas.[4] Since the old Spanish division for religious purposes was used very largely as the basis in fixing the boundaries of these new areas, the term parish was applied to each of them. As the population of Louisiana increased and as changing conditions warranted, new parishes have been created from time to time until they now total sixty-four in all. The term parish in itself means no more today than does the term county. As an administrative and political area, the parish has much the same organization and functions as the county, and for practical purposes the names might be used interchangeably.

The Administration of Counties and Parishes

The county judges established under the county organization, aside from their judicial duties, performed nearly all of the civil duties of the Spanish commandants. They were required to promulgate the laws, supervise the levy and collection of taxes on real estate, record and preserve land titles, and in general regulate the internal police of the county. County judges were appointed by the governor.[5]

With the creation of parishes in lieu of counties a corresponding change took place in the terminology of the judicial officer. The parish judge at first had civil, criminal, and police jurisdiction. Subsequent legislation modified his position and powers by creating other officers and bodies. The parish judge was required to be a landholder in the territory. He was appointed by the governor for a term of four years, and could be removed by the governor at the request of two-thirds of both houses of the legislature. In general, he

[4] Acts of the Second Session, *op. cit.*, pp. 10-12.

[5] Acts of the First Session, *op. cit.*, p. 58. See also Acts of the Second Session, *op. cit.*, pp. 6-8; Rowland, Dunbar, *Official Letter Books of W. C. C. Claiborne*, Vol. I, pp. 41, 47, 376, Vol. V, p. 305; *Acts of the Legislature of Louisiana*, (1804-1816), compiled by Martin, Francois-Xavier, Vol. II, p. 108.

exercised the same powers and performed the same administrative duties as did the county judge.[6]

The parish jury, or the police jury, first came into official existence on April 6, 1807.[7]

> "The parish judges together with the justices of the peace and a jury of twelve inhabitants shall meet once in the year, or more often if necessary, at the request of the parish judge in order to deliberate on and make all necessary regulations relative to roads and levees. They are to order and provide for the execution of whatever concerns the interior and local police and administration of their parish; and likewise to undertake all improvements which they may deem useful to the community, whether they consist of new roads, bridges, levees, or navigation; and the expense attending such works shall be shared by all inhabitants and distributed among them in the manner which shall seem the most just and most convenient to their interests."

This provision was of a general character and applied to all the parishes, and made the establishment of parish juries, or police juries, uniform throughout the state. It is interesting to note, however, that the term "jury" was used in an administrative sense as early as 1805-1806. During the first session of the first territorial legislature the following provision was passed:[8] "giving the inhabitants of the county of Opelousas the right to keep in repair the passage of Plaquemines." The requisite procedure was described as follows: ". . . . the judge of the county of Opelousas, and the justices of the peace, jointly with a jury of twelve inhabitants of said county shall determine the means the most convenient for that purpose. . . . . " These two provisions are, perhaps, sufficient evidence to show that the police jury as an administrative body is of American origin, although the term itself probably is not.

Since the parish judge was the executive officer of the parish, and since he exercised the powers and performed the duties of that position in regard to the general administra-

[6] Acts of the Second Session, *op. cit.*, pp. 14-50; Rowland, *op. cit.*, Vol. IV, p. 224, Vol. V, pp. 98, 308, Vol. VI, pp. 14, 53; Digest of 1816, *op. cit.*, Vol. III, pp. 262-270.
[7] Digest of 1816, *op. cit.*, Vol. III, p. 286; Rowland, *op. cit.*, Vol. VI, p. 16.
[8] Acts of the First Session, *op. cit.*, pp. 92-94.

tion of the parish, it is doubtful whether the parish jury at first performed any other function than that of deliberating and advising. The necessity arose of at least having the taxpayers represented whenever works of public nature were being considered. The parish judge appointed the members of the jury.

On April 30, 1811, the police jury was placed on an elective basis, selected by the qualified voters of the parish.[9] Jurors were required to be freeholders, and they were elected for two year terms. A quorum consisted of nine members. In case of the death, resignation, or removal of a member, the parish judge was required to call a special election to fill that vacancy. The parish judge was presiding officer, and when petitioned by twelve freeholders he was required to summon the police jury for a special meeting. As a result of this action the members of the police jury were popularly elected for a definite term and were given legislative duties to perform, in that they were the policy determining body of the parish. The parish judge, however, still acted as the administrative agent, and justices of the peace still retained membership in the police jury.

Municipal Government

Local government, aside from parishes, was practically ignored during the territorial stage of Louisiana. In addition to New Orleans, only one other municipal charter was granted between 1804 and 1812. In 1811 the town of Vidalia was incorporated, but it was placed under the supervision and control of the police jury, and had no local governing officials except those provided for by the police jury.[10]

It is quite possible that communities in Louisiana from 1804 to 1812, except New Orleans, were so small and had so few inhabitants that the legislature decided to spend its efforts in organizing the parishes, the real local units, since municipal life at that time did not constitute any serious problem.[11] Provision was therefore made for syndics, or justices of the peace, in strategic positions in the parish, and these officials, under the parish judge, had charge of all community activities.

[9] Digest of 1828, *op. cit.*, Vol. I, pp. 653-655.
[10] Digest of 1816, *op. cit.*, Vol. III, pp. 382-92.
[11] See Ficklen, *op. cit.*, pp. 87-98.

New Orleans and Orleans Parish

The first political organization in Louisiana, incorporated under the laws of the United States, was New Orleans.[12]

On February 17, 1805, a charter was granted by Governor Claiborne incorporating it by the name of the "Mayor, Aldermen, and Inhabitants of the City of New Orleans." A municipal organization typical of the times was created. A mayor and a recorder, appointed by the governor, were provided, with a council composed of fourteen aldermen elected to office for terms of two years, two from each of seven wards into which the city was divided. The clerk and treasurer were appointed by the council. To the former officer, in addition to the other duties peculiar to his office, was delegated the task of keeping a list of the qualified voters of the city, probably the first attempt made in Louisiana to compile a voting list. The latter officer had charge of the city funds and of all records concerning them.

The council was granted rather broad ordinance powers for the internal regulation of the city. The taxing power was vested in the mayor and council. The mayor exercised the veto power subject to a two-thirds affirmative vote by the council. The mayor granted all licenses and appointed minor officials. The recorder was president of the city council and performed the duties of the mayor when that official was absent or incapacitated. A city court was created, and the mayor and recorder were also made justices of the peace.

Governor Claiborne likewise created a New Orleans Board of Health, the duties of which were defined by the mayor and council, and whose members were nominated by the council and appointed by the mayor.

The County of Orleans, later the Parish of Orleans, was among the parishes first created. Its government and organization were almost identical with those of other parishes. Not until 1822 is it possible to discern the close relationship between New Orleans and Orleans Parish, and trace their development together.

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[12] Digest of 1816, *op. cit.*, Vol. III, pp. 198-228; Robertson, *op. cit.*, Vol. I, p. 281; Rowland, *op. cit.*, Vol. II, p. 204.

The Administration of Justice

Under the county organization, county courts of inferior jurisdiction were established. Suits were instituted by petition in the form of a bill in chancery. The definition of crimes and the mode of prosecution in criminal cases was adopted according to the common law of England. Counties were also erected into superior court districts in each of which a superior court judge held court at specified times. Clerks of the county courts and of the superior district courts, or circuit courts, were appointed by the governor.[13]

With the creation of parishes, parish judges were provided, one in each parish created.[14] They had jurisdiction in all civil cases, and exclusive and final jurisdiction in cases involving less than one hundred dollars where both parties to the suit were landholders and resided in the parish. They had no jurisdiction over free persons in the parish in criminal cases except for libel and slander, or for assault and battery. Parish judges probated wills and decided all cases involving the appointment of guardians and administrators, and cases concerning agreements. They could punish for contempt of court by a fine not exceeding one hundred dollars. All parish judges were to possess and exercise the same powers and were to perform the same duties as did their predecessors under the county organization. Parish judges were required to give bond for from five to ten thousand dollars (according to the responsibilities of the position) with two good sureties.

An attorney general and six district attorneys appointed by the governor represented the state and prosecuted all criminal cases.[15]

Appointments of justices of the peace by Claiborne were among his first official acts.[16] They exercised much the same powers and performed almost the same duties as did the French and Spanish syndics. These latter, however, had purely administrative functions which the justices of the peace did not seem to have. Neither they nor any other officer appointed by the governor, could be made a party

[13] Acts of the First Session, *op. cit.*, p. 58. See also Acts of the Second Session, *op. cit.*, pp. 6-8; Rowland, *op. cit.*, Vol. III, pp. 41, 47, 876, Vol. V. p. 805; Digest of 1816, *op. cit.*, Vol. II, p. 108, Vol. III, p. 47; Martin, *op. cit.*, p. 325.

[14] Acts of the Second Session, *op. cit.*, pp. 14-50; Rowland, *op. cit.*, Vol. IV, p. 224, Vol. V, pp. 98 and 308, Vol. VI, pp. 14-53; Digest of 1816, *op. cit.*, Vol. III, pp. 262-270.

[15] Digest of 1816, *op. cit.*, Vol. I, p. 536.

[16] Acts of the First Session, *op. cit.*, pp. 94-96.

to a civil or criminal suit except for fraud, or for a crime committed under the powers delegated to them.

Their duties were to hear and decide all complaints of breaches of the peace, or of crimes or misdemeanors.[17] They took the bond of accused persons in civil cases only, and remanded them for trial in the next term of the proper court. In criminal cases they had the accused imprisoned under the custody of the sheriff. They were required to keep a complete record of all civil cases brought before them and the decision rendered in each case. All justices of the peace had jurisdiction over cases of debts and damages to the amount of one hundred dollars, subject to appeal to the parish court in all cases above twenty-five dollars. They exercised the same powers and jurisdiction under the parish as they had formerly exercised under the county. They punished breaches of the peace with fines not exceeding twenty dollars, the fines reverting to the benefit of the parish. Imprisonment could not exceed twenty-four hours.

It is not out of place to mention again the fact that justices of the peace were ex officio members of the police jury. Because of their judicial duties it was considered proper for them to act as members of the administrative council as well. This fact is of value as it illustrates the great importance attached to the office of justice of the peace in the southern states during the first half of the nineteenth century.

The sheriffs of the territory performed practically the same duties and had the same functions as did the Spanish alguazil mayor.[18] They were appointed by the governor. Sheriffs were required to execute all writs and orders, judgments and decrees, within their respective districts. They gave bond with two sureties. Sheriffs for the superior court districts and for the supreme court districts were also appointed. The change from county to parish organization did not affect their powers and duties.

Constables were appointed by the county judge to each court of a justice of the peace.[19] Where no such officer had

[17] *Ibid.* See also Digest of 1816, *op. cit.*, Vol. II, pp. 106, 108, 524, 528; Rowland, *op. cit.*, Vol. III, p. 59.

[18] Acts of the Second Session, *op. cit.*, pp. 6-8; Digest of 1816, *op. cit.*, Vol. I, p. 692; Rowland, *op. cit.*, Vol. III, pp. 49, 149, Vol. IV, p. 66, Vol. V, p. 359.

[19] Acts of the First Session, *op. cit.*, p. 96; Digest of 1816, *op. cit.*, Vol. II, p. 114.

been provided, the justice was capable of making a temporary appointment. Constables were required to execute the orders of the court. Under the parish organization constables were appointed by the parish judge.

In all cases where the judges deemed it necessary a jury trial was held.[20] The sheriff of the parish drew the names of the prospective jurors (for the parish court) in the presence of the parish judge. To be eligible for jury service, state citizenship was necessary.

Coroners were appointed by the governor for each county and later for each parish of the territory.[21] Their official duties were to hold inquests, serve as ex officio conservators of the peace, and act for the sheriffs of their respective parishes whenever that officer was a party to a suit. In case of the death or removal of the sheriff, the coroner acted in his official capacity until a successor was appointed.

Suffrage and Elections

The right to vote at the first election of state representatives was restricted as follows: The applicant had to certify before a notary public on the sworn testimony of two property holders, or business men, that he had been a citizen of the United States for three years, and that he held at least two hundred acres of land in fee simple. By 1806 the qualifications to vote had been reduced in number and in severity to the extent that the ownership of fifty acres of land for three months was the only requirement.[22]

County sheriffs with two justices of the peace, named by the county judges, were commissioners for the conduct of elections and for counting votes. Lists showing election results and bearing the signatures of the commissioners were sent to the governor fifteen days after the election. In 1807 parish judges took the place of sheriffs on the boards of election commissioners.[23] This procedure was simple because of the sparse rural population. The increasing complexity of election laws and procedures may be used as a measure to record the growth in the population of the state. This had already become apparent in New Orleans.

[20] Digest of 1816, *op. cit.*, Vol. II, pp. 518 *ff.*
[21] Digest of 1816, *op. cit.*, Vol. I, pp. 122 *ff*; Rowland, *op. cit.*, Vol. V, p. 381.
[22] See Acts of the First Session, *op. cit.*, pp. 18, 20.
[23] *Ibid.* See also Digest of 1816, *op. cit.*, Vol. II, p. 286.

Education and Schools

Elaborate plans for an educational system, built around the College of New Orleans, and using the county as a unit were formulated and enacted. But appropriations and funds were not sufficient to establish county schools and when such schools were established they were nearly always secondary in character.[24]

The whole system was faulty in that no one seemed to realize the necessity of primary and grade schools, these to be followed by the necessary secondary schools at a later date. In these plans a jury or a board appointed by the judge at one time and at a later date by the regents of the College of New Orleans, and consisting of local inhabitants, was to determine the amount of tuition necessary for the education of all children, and was to exercise a general supervision over school affairs. Trustees were then to be chosen out of the jury for more active work, while the jury remained as the directing agency. The creation of parishes brought about no change in the school system. The few schools established continued to operate, although most of them were substantially private in character, since tuition was nearly always charged, and few beneficiary students were accepted.

Fiscal Officers

County treasurers were appointed by the governor. They acted as depositories for county funds and kept records and accounts concerning them.[25] State funds were recorded separately when deposited temporarily with the county treasurer. Expenses charged to county funds were paid on warrants issued by the county judge and countersigned by the clerk of the court. The status of such officers was not changed by the creation of parishes.

Roads and Levees

The parish judge was required to execute all regulations relative to roads, levees, and cattle, passed by the police jury.[26] He published such regulations by means of posters

[24] Acts of the First Session, *op. cit.*, pp. 8, 9; Digest of 1816, *op. cit.*, Vol. III, pp. 424 ff; Rowland, *op. cit.*, Vol. VI, pp. 42, 143. Also see Ficklen, *op. cit.*, p. 128.
[25] Digest of 1816, *op. cit.*, Vol. III, p. 894; Rowland, *op. cit.*, Vol. III, p. 888.
[26] Digest of 1816, *op. cit.*, Vol. II, pp. 586-604; Vol. III, pp. 812-814.

and in the nearest newspaper. The judge and two inhabitants were required to examine and pass upon all new public works. The cost, or the work of keeping and repairing the levees, was prorated among the owners of the land situated in designated lots, according to the value of those lands. This valuation was provided by the police jury. In 1811 the legislature appropriated money for roads in various parts of the territory, and such roads were superintended by the judges of the parishes and other men who were named road commissioners. Their duties were to see that the roads were surveyed and opened, to let contracts, to supervise and report the progress of the work to the legislature, and to take an oath before the parish judge or justice of the peace to carry on the work in a faithful manner.

Roads, levees, and drainage projects were thought of then as being not only local in character but also local in importance. The policy of state aid, soon to be followed by state supervision, was apparently beginning, but these important public works were for a long time allowed to languish under the direction of local authorities.

From this survey of local institutions and local agents of Louisiana during its territorial organization, it is possible to form a conception of the political mindedness of a people not long identified with democratic institutions, but determined to realize certain ideals in the future.

CHAPTER V

Local Government, 1812-1877

The period extending from 1812 to 1877 may be aptly described as one of transition when applied to local government. Like other states Louisiana was a growing organism, and its political divisions were affected to an equal degree. This was true especially of the Reconstruction Era (1866-1877). Changes both bewildering and numerous took place, not only in the organization of the state government but also in the organization of local political life. By way of contrast a few of the most outstanding examples of Reconstruction Acts in the field of local government are mentioned. The normal and steady evolution of local organization was

checked during these few years. The thorough reorganization of state and local institutions after the Reconstruction Period was based upon the structural forms prevailing prior to the Civil War. Old institutions, defective though they were, were deemed safer than new, untried forms, especially when tainted with Republicanism. A decentralization resulted from which Louisiana has never yet recovered. Developments subsequent to 1877 have been noted in the chapters on present local government and administration.

From 1812 to 1879 the State of Louisiana had six constitutions, each a revision or recasting of the preceding one, with such additions as were considered necessary at the time. They were those of 1812, 1845, 1852, 1864, 1868, and 1879. As a result of this frequent change in the organic law, official revisions of the statutes were also necessary. Revisions of this character occurred in 1816, 1828, 1852, 1856, and 1870, the last being the present official edition.

Law and The Administration of Justice

The civil law of Louisiana has always been written law.[1] From 1699 to the cession of Louisiana to Spain in 1762, French customs and law prevailed in the province. The laws of France operating in Louisiana were the ordinances and edicts of the king, the Custom of Paris, and the orders of the council of state emanating from the king. Roman civil law provided a basis, but in itself it was not obligatory.

The Custom of Paris was extended to Louisiana by the Crozat Grant of 1712. This custom, from which some of the principles of the Louisiana civil law are derived, was a codification of the customary law of the Duchy or County of Paris, and was commenced in the fifteenth century and completed in the sixteenth. This brief compilation may be considered the first code of Louisiana, but not the whole civil law of the period because the edicts and orders of the kings of France were also a part of the law.

French institutions and laws were abolished by O'Reilly when he established in their place the laws and institutions

[1] This section is based on the Introduction, *Civil Code of Louisiana*, by Dart, B. W., ed. Also see Dart, W. K., "The Louisiana Judicial System," *1 La. Digest*, (1917); Dart, H. P., "Sources of the Civil Code of Louisiana," *Reports of the Louisiana Bar Association*, 1911; "History of the Supreme Court of Louisiana," *135 La. Reports*, (1918); "The Place of the Civil Law in Louisiana," *Tulane Law Review*, Feb., 1930; and "The Influence of the Law of Spain on the Jurisprudence of Louisiana," *Journal of the American Bar Association*, Feb., 1932.

of Spain. He promulgated in the French and Spanish languages two ordinances known as O'Reilly's Code. The two ordinances formed a brief and partial abstract of the regulations and laws of Spain, and were derived from the Recopilacion de las Indies, the Nueva Recopilacion de Castile, and the Siete Partidas. It was not intended as the exclusive law of the colony but only as a temporary code to serve until the general laws of Spain were better understood in Louisiana. Other special laws and regulations applicable wholly or in part to Louisiana, were issued from time to time during the Spanish occupation.

With the cession of Louisiana by Spain to France in 1800, the French system of law again became supreme, but it was inoperative until Laussat took physical possession for France in 1803. During the limited time at his disposal Laussat sought to readopt French law in a series of promulgations, and these acts may be considered the re-entering wedge which later permitted the use of the Code Napoleon as the basis of Louisiana law. About twenty days after receiving Louisiana from Spain Laussat delivered the province to the Commissioners of the United States on December 20, 1803.

Governor W. C. C. Claiborne, under commission by President Jefferson, was vested with all the authority previously exercised by the former Spanish governor and the intendant of Louisiana. Claiborne's effort to bring Louisiana under the dominion of the common law, as it was then applied in the various states of the United States, was checked by popular disapproval, and the question was submitted to the courts, resulting in the establishment of the principle that the civil law of Louisiana as it existed at the time of the delivery to the United States still remained in effect.

The first civil code of Louisiana was enacted during the territorial period. It was promulgated by the legislature in 1808 and preserved the fundamentals of the civil law. In composition it consisted very largely of the Code Napoleon, but it also contained changes and modifications to suit the conditions of the time and the people, including other principles of French and Spanish origin made familiar during the colonial regime.[2]

[2] See Dart, W. K., *loc. cit.*, pp. 20-21.

The Code of 1808 remained in force during the territorial period and for thirteen years after the admission of the territory into the Union as a state. The Constitution of 1812 and all subsequent organic provisions have provided safeguards against the adoption of any other system of law than that which now prevails in Louisiana.

In 1825 a revision and restatement of the civil law was made and promulgated to end the uncertainty resulting from repeated decisions of the courts that the ancient laws of Spain, not inconsistent with the Code of 1808, were still applicable; and *Acts of Louisiana,* 83 of 1828, expressly repealed all civil laws which were in force before the promulgation of the Code of 1825, thus making the latter the basic law.

The Civil War made many changes in the civil and economic life of the state, and in order to meet the new conditions and to harmonize the law by embodying in the code the judicial construction of, and the legislative additions to, the Civil Code of 1825, it was revised and reenacted in 1870 and promulgated as the Revised Civil Code of 1870.

The civil code may therefore be called the civil law of Louisiana, governing all personal and property rights, except so far as they have been or may be modified by the constitution and the legislature.

In French Louisiana, from 1712 to 1769, the practice, procedure, and forms of pleading before the superior court followed those prevailing in the Chatelet of Paris, one of the oldest law courts of France; and the rules were found in the Custom of Paris.[3] In Spanish Louisiana, from 1769 to 1803, under O'Reilly's Ordinance of 1769 bringing the colony under the laws of Spain, some substantive changes were made in the forms of practice and procedure to bring them within the scope of the rules contained in the Partidas, and other Spanish regulatory provisions. The Code of Practice of 1825 drew from both of these sources. Confusing judicial pronouncements, and the disturbing influences of the Civil War made necessary a revision of the code of practice in 1870.

As has been noted before, the criminal law of Louisiana is based on the common law of England.[4] Provincial Louisiana seems to have had no definite system of criminal law

[3] Dart, B. W., *Louisiana Code of Practice*, p. III.
[4] See Digest of 1828, *op. cit.*, Vol. I, p. 362.

other than that which prevailed in France, and in the Indies under Spain.[5] When Claiborne assumed charge of Louisiana he did so under an Act of Congress of March 26, 1804, which provided that all the former laws in force, and not inconsistent with the statute, should remain in force unless and until repealed. On May 4, 1805, the territorial legislature passed a statute defining crimes and misdemeanors. It was based upon the territorial enabling act which defined crimes and their punishments according to the common law of England. Subsequent attempts were made to prepare a criminal code similar to that for the civil law, but nothing came of them. The criminal law of Louisiana, therefore, remains today the common law of England, with such changes as the legislature has adopted. In 1926, however, a commission was selected to draft a code of criminal procedure.[6] The prepared code was adopted with several changes in 1928, but all existing criminal procedural statutes were not incorporated, neither were they repealed. As a result, there is uncertainty as to what prior laws are still in effect. This condition does not affect the basis of the criminal law, as it remains as it has always been.

Thus, in addition to the constitution and statutes of Louisiana, there are three separate and distinct codes; the civil code, the code of practice, and the code of criminal procedure.

The state judiciary, in 1813, consisted of a supreme court, district courts, and parish courts. The state was divided into seven judicial districts, each under a district judge who held court in each parish within his district. District judges had final jurisdiction in all cases involving amounts under one hundred dollars, and criminal jurisdiction in all cases. Parish judges were required to send up all records, of cases depending before them, to the district courts in which their parishes were included.[7]

Parish courts were created in each parish with jurisdiction in all civil cases and final jurisdiction in cases not involving more than one hundred dollars. They had no jurisdiction over criminal cases. In cases involving the determination of facts a jury trial was provided. All judges were ap-

[5] Dart, W. K., *loc. cit.*, pp. 42-43.
[6] See *Draft of Code of Criminal Procedure*, 1928.
[7] Digest of 1816, *op. cit.*, Vol. II, pp. 140-222.

pointed by the governor with the advice and consent of the senate.[8]

An attorney general, who was also attorney for the first district, and six district attorneys were appointed by the governor for terms of two years as public prosecutors.[9] Clerks for the district courts were appointed for each parish by the district judges, and they also performed the duties of clerks of the parish courts.[10]

The Constitution of 1845 created district courts, with no provision for parish courts, and provided for seventeen judicial districts.[11] Clerks of the district courts were elected for two year terms.[12]

The number of judicial districts was increased to eighteen in 1852, and district judges were placed on an elective basis for terms of four years. District courts had original jurisdiction in all cases involving amounts of fifty dollars or more, and original jurisdiction in all criminal cases and successions. District judges went on circuit among the various parishes comprising their districts. There were two terms, one for jury causes, the other for probates.[13] Clerks of the district courts were elected for four year terms and were bonded for five thousand dollars.[14]

The state was divided into thirteen judicial districts under the Constitution of 1868, and each district judge went on circuit as before. District courts had original jurisdiction in all civil cases where the amounts involved exceeded five hundred dollars, and had unlimited jurisdiction in all criminal cases. They had appellate jurisdiction in ordinary civil suits where the amounts involved exceeded one hundred dollars. Judges were elected for four year terms, and had to be citizens of the United States, citizens of the state, twenty-five years of age, and were required to have practiced law in the state for at least two years.[15]

At the same time, parish courts were again created with judges elected for two year terms. These courts exercised concurrent jurisdiction with justices of the peace in all cases involving more than twenty-five dollars and less than one

[8] *Idem.*
[9] *Ibid.* Vol. I, pp. 526 and 536.
[10] *Ibid.*, Vol. II, pp. 72-84.
[11] *Const. 1845*, art. 62.
[12] *Revised Statutes of Louisiana*, compiled by Pierce, Taylor and King, 1852, p. 248.
[13] *Revised Statutes of Louisiana*, compiled by U. B. Phillips, 1856, pp. 275-286.
[14] *Ibid.*, pp. 84-87.
[15] *Const. 1868*, arts. 84-85.

hundred dollars. They had exclusive and original jurisdiction in all cases involving amounts between one hundred dollars and five hundred dollars. In criminal cases they exercised jurisdiction where the penalty was not imprisonment at hard labor or death. There was no trial by jury in parish courts.[16]

District attorneys were elected for each judicial district for four year terms.[17] Clerks of the district courts were elected in the various parishes for four year terms. District clerks, in addition to the regular duties in the district courts, performed the clerical duties of the parish courts, kept the dockets, acted as custodians of all judicial records of the parish, were authorized to call meetings of the police juries when there were no presidents, and acted with various financial officers in the assessment of taxes.[18]

Justices of the peace have always been, in the past, an important cog in the machinery of the administration of justice. Petty cases which would ordinarily clog the dockets of a court of record are dealt with as they arise. Once considered of major importance in local government, they still occupy an important place in rural areas.

Under the Constitution of 1812 justices of the peace were appointed by the governor. There was at least one justice for each parish. They had power to imprison in suits where there was no property and the party refused to pay the fine. Justices had jurisdiction over all cases of a civil nature, within their respective districts, where the debt or demand did not exceed fifty dollars, with an appeal to the parish court in cases where the amounts were more than twenty dollars. Qualifications for office were United States citizenship and the ownership of property in the district from which the individual was appointed.[19]

In 1817 police juries and a majority of the justices of the peace in each parish were authorized to divide their respective parishes into as many justice of the peace wards as they thought were necessary, so that one justice could be appointed for each section. All justices were authorized to employ the sheriff or a deputy to serve writs and to carry out orders.[20]

[16] *Ibid.*, arts. 86-87.
[17] *Ibid.*, art. 92.
[18] *Ibid.*, art. 88. See also *Digest of the Statutes of Louisiana*, compiled by John Ray, 1870, Vol. I, pp. 292-299.
[19] Digest of 1816, *op. cit.*, Vol. I, p. 448, Vol. II, pp. 6, 530-554.
[20] Digest of 1828, *op. cit.*, Vol. II, pp. 630-643.

The Constitution of 1845 provided for the popular election of justices of the peace for terms of two years. Their jurisdiction over civil cases was limited to those where the amounts involved did not exceed one hundred dollars.[21] They were elected from police jury wards so that the number of justices corresponded to the number of jurors. In wards containing an incorporated town, or a town of three hundred inhabitants, two justices of the peace were elected. All justices of the peace acted as examining and committing magistrates.[22]

Under the Constitution of 1852 justices of the peace were authorized to issue writs of injunction within their respective jurisdictions. No justice had jurisdiction over cases where the defendant did not reside in that ward. They exercised jurisdiction over all infractions of levee laws and over all municipal ordinances and parish regulations where the penalty to be imposed did not exceed one hundred dollars.[23] The Constitution of 1868 made all judgments of justices of the peace appealable to the parish courts.[24]

Sheriffs were appointed by the governor under the Constitution of 1812, for terms of three years for each parish in the state. They were required to give bond with two sureties. Their duties were to execute all judgments and orders of the district and parish courts, and also for the supreme court when sitting in that district. In addition, they were required to perform all other duties as provided from time to time.[25] Sheriffs were ex officio tax collectors, keepers of the public jails, and peace officers. They were authorized to appoint, with the approval of the parish judges, as many deputies on their own responsibility as they thought were necessary. They were required to recover or account for all fines imposed by the courts of the state and by the justices of the peace.[26]

In 1825 the terms of sheriffs were shortened to two years, [27] and in 1847 sheriffs were placed on an elective basis, one for each parish.[28] Under the Constitution of 1868 the

[21] *Const. 1845*, art. 81.
[22] Revised Statutes of 1852, *op. cit.*, pp. 370-378.
[23] Revised Statutes of 1856, *op. cit.*, pp. 300-302.
[24] Digest of 1870, *op. cit.*, Vol. II, pp. 102-113.
[25] This is another indication of the importance of local officers during this early period.
[26] Digest of 1816, *op. cit.*, Vol. III, pp. 326-332.
[27] Digest of 1828, *op. cit.*, Vol. I, p. 19.
[28] Revised Statutes of 1852, *op. cit.*, p. 357.

sheriff was no longer ex officio collector of taxes, but he was one of the assessing officials.[29]

Under the Constitution of 1812 constables were appointed and removed from office by the police juries of their respective parishes. They were regulated by the acts of the territorial legislature and subsequent legislation.[30] In 1846 they were elected by popular vote for terms of two years, one in each police jury ward of the various parishes. They were required to reside in the ward, and to be qualified to vote for members of the general assembly. Their authority extended throughout the state.[31]

In 1855 their jurisdiction was restricted to the parish of each constable. They were empowered to serve processes of the justices of the peace and to seize and sell property.[32] All constables gave bond for five hundred dollars.[33] In 1870 a chief constable was appointed by the governor in each parish. Chief constables were authorized to appoint their own deputies and hold office during the pleasure of the governor. The act creating these offices superseded previous acts, and the officers provided inherited the powers of their predecessors.[34]

Under the Constitution of 1812 the governor appointed one coroner for each parish. Residence within the parish was required. His duties were to hold inquests with juries of from four to six freeholders in cases of violent or unnatural causes of death, to exercise the duties of a justice of the peace, and to act for the sheriff in cases where that officer was a party to a suit. He had all persons who died without relatives or funds buried at public expense. He gave bond not exceeding one-half of the sum required from the sheriff of the parish.[35] In 1846 coroners were placed on an elective basis for two year terms.[36] In 1855 coroners were given the authority to arrest persons against whom a verdict had been found.[37]

The state legislature, in 1855, provided for a recorder in each parish, elected for a four year term. He was required

[29] Digest of 1870, *op. cit.*, Vol. II, p. 480.
[30] Digest of 1828, *op. cit.*, Vol. II, p. 242.
[31] Revised Statutes of 1852, *op. cit.*, pp. 248, 355-356.
[32] Revised Statutes of 1856, *op. cit.*, pp. 105-106.
[33] Digest of 1870, *op. cit.*, Vol. I, pp. 325-326.
[34] *Ibid.*, pp. 327-328.
[35] Digest of 1828, *op. cit.*, Vol. I, pp. 285-286.
[36] Revised Statutes of 1852, *op. cit.*, pp. 168-248.
[37] Revised Statutes of 1856, *op. cit.*, pp. 107-110.

to make inventories, appraisements, partitions, to receive wills, to make contracts, conveyances, protests, and other legal documents, and to record all acts of notaries. Bond for two thousand dollars with two sureties was required in each case.[38] In 1870 recorders were each allowed to appoint a deputy. They were also required to accept and keep the assessment rolls.[39]

The Parish

According to a legislative provision of 1813 all parishes were to be divided by the parish judges and justices of the peace into as many wards as they thought necessary to secure an equal representation on the police juries. Jurors were elected annually for two year terms, one-half of them retiring each year. In case of the death or removal of a juror, the parish judge was required to call a new election to fill the vacancy. The powers and functions of police juries included the police of slaves; the construction and maintenance of roads, bridges, causeways, dikes, levees, and other byways; the clearing of banks of streams; the regulation of cattle; the police of taverns and houses of public entertainment; the denomination of parish fines and penalties; the establishment of ferries; the appointment of a parish treasurer, parish constables, and parish assessors; and the levying of taxes necessary for the construction and maintenance of works of a public nature. They were charged to see that such taxes were assessed equally among the various taxpayers.[40]

In 1816 the parishes of the state were divided by the parish judges and the justices of the peace into not more than twelve nor less than five wards, laid out according to local conditions. Each ward was entitled to one juror elected for two years, one-half of the jurors being elected annually. Under this provision police juries were authorized to sue for amounts due the parish which had been expended for public works. In 1818 parish judges and police jurors received two dollars for every day that they were actually employed in the service of the parishes. Acting together they were au-

[38] *Ibid.*, pp. 447-448.
[39] Digest of 1870, *op. cit.*, Vol. II, pp. 417-427.
[40] Digest of 1828, *op. cit.*, Vol. II, pp. 244-249. Compare this list of powers with those of police juries today. It will be found that they are basicly similar, those of today being greater in number only.

thorized to appoint by majority vote syndics, or other persons, to superintend the work on levees, roads, and other public projects.

By 1824 justices of the peace no longer acted as members of the police juries. In the absence of the parish judge, the members of a police jury were authorized to appoint a temporary president.[41] The parish judge was relieved of the right to vote in jury meetings, but he was authorized to discuss and deliberate with the other members. A majority of the members formed a quorum, but two-thirds of the members had to be present when that body was considering a parochial tax. Whenever twelve or more freeholders of the parish petitioned the parish judge to convene the police jury for special purposes, that officer was required to issue the necessary summons at least five days previous to the day specified for such meeting.[42]

In 1847 police juries were given the power to elect their own presidents, and all duties before performed by the parish judges were from then on exercised by the presidents. By 1856 they had been given the power to change at will the number of police jury wards and the boundaries of such wards. Police jurors and their electors had to be eligible to vote for members of the house of representatives of the general assembly. Additional powers granted to police juries from 1828 to 1856 were the regulation of fences, the right to levy a tax on peddlers, the regulation of toll bridges, the power to levy taxes for the support of the poor, the regulation and provision for natural drains, to appoint their own officers, to issue ordinances regarding trespasses, to issue quarantine regulations, and to lease school lands. Police juries were required to publish an estimate of proposed expenditures at least thirty days prior to fixing and deciding on the amount of revenue necessary and the rates to be assessed. For the administration of justice they were required to provide courthouses and jails.[43]

By 1870 police juries had been authorized to appoint district attorneys to act as parish attorneys and to represent the parishes in parish courts.[44] Police juries of the several parishes were each allowed to delegate two beneficiary

[41] *Idem.*
[42] Digest of 1816, *op. cit.*, Vol. III, pp. 298-302.
[43] Revised Statutes of 1856, *op. cit.*, pp. 406-411.
[44] Digest of 1870, *op. cit.*, Vol. II, p. 341.

cadets to Louisiana State University. The city of New Orleans was allowed to send twenty such cadets.[45]

Municipal Government

It appears that nearly all municipalities had to go through a preautonomous stage during the first few years of Louisiana statehood before they were given any degree of local freedom. But once granted particular forms of government, the legislature was generous even to the point of lavishness in bestowing powers upon them.

Until approximately 1830 all municipalities just incorporated were placed under the direction and control of the police juries of their parishes, and their officers of government were selected by their police juries.[46]

When large enough to warrant partial separation from their parishes for certain activities, municipalities were granted new charters or, if they had grown so rapidly as to escape the probation stage, they received their original charters. The forms of government were simple and yet they differed in many instances.[47]

In general, municipalities were organized on the trustee plan, with from five to seven trustees or selectmen elected annually.[48] They in turn selected a village president from their own number who presided over meetings of the board and acted for that body in administrative matters. Ordinarily the board of trustees selected three assessors, a tax collector, a treasurer, a constable, and five fire wardens, although in some instances these town officers were on an elective basis. Salaries or compensations were provided for by the board.

The powers of boards of trustees included those of enacting ordinances, regulating town affairs, and providing for the "police and discipline of the inhabitants." Powers of taxation varied, but in general no board of trustees could levy and collect more than five hundred dollars per year unless the taxpayers of the town consented to the added burden at a special election held for that purpose. In other

[45] *Ibid.*, Vol. II, p. 345.

[46] See Digest of 1828, *op. cit.*, Vol. I, p. 220 for Clouterville; p. 497 for Franklin, parish seat of St. Mary Parish; p. 508 for Grahamville; p. 644 for Lafayette.

[47] See *Ibid.*, p. 9 for Alexandria; p. 83 for Baton Rouge; p. 417 for Donaldsonville; Vol. II, p. 61 for Monroe; p. 76 for Natchitoches; and p. 154 for Opelousas.

[48] The governing board of Opelousas was termed the board of police. Its powers and duties were identical, however, with those of boards of trustees or selectmen.

instances taxes were limited to a certain rate per one hundred dollars of taxable property. Boards could also require able bodied male inhabitants to work on roads or other public works for not more than a set number of days per year, usually seven.

Occasionally the original charters required the division of towns into from two to six wards, for purposes of better representation. Otherwise, selectmen and trustees were elected at large.

The president of the board was very often appointed a justice of the peace and he, or other justices of the peace residing in the vicinity, saw to the enforcement of town ordinances. All other cases of a civil or criminal nature went directly to the parish or district court, there being no separate municipal courts. In only rare instances, such as was the case for Baton Rouge, was a town magistrate provided. When that was done he was popularly elected.

In all town elections the parish judge was at first required to be personally present, conduct the elections, and declare the results. Later this practice was discarded and the towns were left more or less to themselves in local election matters.

From the very beginning of corporate life in the State of Louisiana parishes exercised considerable control over municipalities within their borders. State and parish taxes were always levied in towns and cities regardless of their size, unless they were partially or wholly exempted by their charters. Aside from New Orleans, no municipality was absolutely independent of parish taxation until after the adoption of the Constitution of 1898.

In spite of its almost primitive organization and extreme simplicity, this form of government, with various changes in terminology, prevailed down through the Civil War, with the exception, of course, of New Orleans.[49] During the war the native Louisianians were too busy with other affairs to give much thought to forms and functions of government. After the war they were, for the most part, disfranchised or unable to gain the ascendency in state and local governments until 1879. Thus, from 1879 to the present is what

[49] See *Acts of La.*, 158 of 1846 for Thibodeaux, 148 of 1847 for Columbia, and 50 of 1858 for Many. See also amendments to charters of Baton Rouge, Alexandria, and Monroe, for the same period.

might be called the modern era of local government in Louisiana. New innovations were occasionally added, new powers delegated prior to the Civil War; but in form and function municipal government was essentially the same in 1860 as it had been from 1812 to 1830.

New Orleans and Orleans Parish

The history of New Orleans and of Orleans Parish is a history of the consolidation of the two areas, for almost from their very beginning their ultimate integration into one political unit can be clearly forseen.

The state legislature further provided for the democratization of the New Orleans government in 1812 by putting the mayor and recorder of New Orleans on elective bases for terms of two years. All administrative officers not otherwise provided for were appointed by the mayor with the consent of the council.[50] Eight wards were created, with two aldermen elected from each of the first six, and one each from the remaining two.[51] No tax could be levied on the residents of the city without the consent of at least two-thirds of the elected aldermen, and the treasurer was required to issue an annual financial report under oath.[52] In 1825 all qualified voters of the city were listed and a reapportionment of aldermen took place, half of them being elected annually.[53]

The Parish of Orleans was incorporated in 1822, and its police jury was constituted its legislative and administrative agent.[54] The jury was authorized to borrow money for public improvements for the whole parish, but such action was valid, however, only with the assent of a majority of the police jurors of the parish and of the aldermen of New Orleans sitting together. Here, it seems, is the starting point of the movement for the consolidation of the city and parish. Whenever a tax was imposed, part of which was payable by New Orleans, twelve members of the city council selected by that body sat with the police jury for the purpose of assessing and levying the tax. Also, aldermen of the city council sat in the police jury and voted on the selling,

[50] Digest of 1828, *op. cit.*, Vol. II, pp. 110-125.
[51] *Ibid.*, pp. 288-298.
[52] *Ibid.*, pp. 125-135.
[53] *Ibid.*, p. 188.
[54] *Ibid.*, pp. 208 ff.

alienating, or mortgaging of any property belonging to the combined area; or on the purchase of any property, the borrowing of money, or on the erection of public buildings. For the affairs of the rural part of the parish, that part of the parish outside of the city was divided into five wards with one juror elected from each ward.

Thus, we see the following situation existing at that time. The police jury, so formed, regulated the affairs of the rural part of the parish only, their authority not extending into the City of New Orleans, while it was the duty of the city council to exercise within the city limits the same functions committed by law to police juries. All questions concerning roads, levees, buildings, and other public works involving the whole parish, rural and urban alike, were regulated by the police jury and the city council sitting together.

The period from 1828 to 1852 was dominated, on the whole, by the city, and little or no change was apparent in the government of the parish. This period marks a rather unique era of experimentation in the form of government of New Orleans. In 1836 the city was divided into three separate municipalities, each with distinct and separate municipal powers, and each under the administration of a council composed of a recorder, and of aldermen elected by wards for terms of two years.[55] The three municipalities were the city proper, the Fauberg St. Marie, and Fauberg Marigny.[56] A mayor, comptroller, treasurer, surveyor, captain of the watch, and a wharfinger were elected by the city at large every two years. For the supervision of affairs of a city-wide character, a common council for the city was provided, composed of four members from each municipality selected by the municipal councils of the respective municipalities. Beginning with 1840 the twelve members of the general council were popularly elected, four members from each municipality.[57] The recorder of each municipality was also president of his municipal council but could not cast a vote. In addition, he was a judicial officer with the approximate jurisdiction of a justice of the peace. Powers of taxation and ordinance making were vested in the mayor and general council, and in the three municipal councils. The mayor and

[55] Revised Statutes of 1852, *op. cit.*, pp. 88, 106, 144. Also see *Haynes v. Municipality No. 2*, 5 La. Ann. 760 (1850).
[56] *Municipal Manual of New Orleans*, 1901. p. 18.
[57] *Acts of La.*, 20 of 1840.

the general council established uniform regulations, fees, and licenses for the whole city.

Beginning with 1850 the three municipal councils were required to publish proposed budgets of expenditures before levying and assessing taxes sufficient to cover expenditures. Before imposing additional taxes in any one year the municipal councils had to secure the assent of a majority of the legal voters at an election held for that purpose. Before incurring any new indebtedness for the city at large the resolution to incur the debt had to have the approval of two-thirds of the elected members of the three municipal councils and be approved by a majority of the legal voters of the city. Provision was made for the establishment of a sinking fund and for the popular election of a board of liquidation to inspect, certify, and control the fund established. The board also had the power to levy a tax to pay the principal and interest on all bonded indebtedness.

Due, no doubt, to its rather complicated and unwieldy governmental organization the municipal affairs of New Orleans did not improve and prosper, and an effort was made to simplify the structure of the government under the Constitution of 1852.[58]

The three separate municipalities were abolished and a single unified government created consisting of a mayor and city council of two chambers. The little town of Lafayette was included as the fourth municipal district. The mayor, four recorders, a treasurer, a comptroller, and a street commissioner were elected at large every two years. The four municipalities were designated as school districts, and the council annually elected a board of school directors for each of them. The first chamber of the city council consisted of nine aldermen elected from the four municipal districts for two year terms. The second chamber consisted of fifteen assistant aldermen elected from wards into which the four municipalities were divided. The mayor exercised the veto power subject to an affirmative vote of three-fifths, later two-thirds, of each chamber.

By a charter amendment of 1856 the treasurer, surveyor, and city attorney were made appointive by a joint session of the council. The mayor and four recorders, and all justices

[58] Revised Statutes of 1856, *op. cit.*, pp. 351-387.

of the peace, composed the police board. The mayor, the comptroller, the treasurer, and the chairman of the finance committee of the city council composed the board of commissioners of the consolidated debt of the city, succeeding the former board of liquidation. A detailed estimate of proposed expenditures and taxes was required to be published by the council for at lease ten days every year before adoption, and the adoption of the estimate was considered as the act of appropriation.

By 1852 the City of New Orleans included all of that part of Orleans Parish on the left bank of the Mississippi River, so the state legislature definitedly separated the city from the remainder of the parish.[59] A separate police jury was created for Orleans Parish on the right bank of the river. The area was divided into seven wards, each with one juror elected for two years. The justice of the peace for that section presided over jury meetings but he had no vote.

In 1870 a radical legislature, made up of "carpet-baggers," native Republicans, and negroes, annexed the Parish of Orleans on the right bank of the Mississippi River to New Orleans as the fifth municipal district, and a part of Jefferson Parish as the sixth municipal district, thus completing the combination of the City of New Orleans and the Parish of Orleans.[60] The expansion of New Orleans was further extended, but ceased at this point, with the annexation of Carrollton in 1874, the latter being designated the seventh municipal district.[61]

A corresponding change in the city government took place in 1870.[62] The newly incorporated municipality was placed under a mayor, and seven administrators, elected at large for two year terms. The departments of administration were finance, commerce, improvements, assessments, police, public accounts, and waterworks and public buildings. The mayor was the executive officer of the city and, with the council composed of the seven administrators, had general ordinance and regulatory powers and the powers of taxation. The mayor, the administrator of finance, and the administrator of public accounts composed the board of commissioners of the consolidated debt of the city. The council elected

[59] *Ibid.*, pp. 412-419.
[60] *Acts of La.*, 7 of 1870.
[61] *Ibid.*, 71 of 1874.
[62] Digest of 1870, *op. cit.*, Vol. II, pp. 243-263.

a secretary, a city attorney, and six recorders for the recorders' courts

This form of municipal organization affords an excellent example of the commission form of government. It was, however, the product of an alien group and could not be tolerated by Louisiana citizens. Under the Constitution of 1879 it was abolished. In spite of the treatment it received it has certain striking similarities to the present commission government in New Orleans, and subsequent mayor council governments bore many imprints of its lasting effect.

Created at the same time as the commission government just described, and patterned largely after the Metropolitan Police Area of New York City, was the Metropolitan Police District.[63] Like its companion it did not long survive its creation, but is important enough to bear mentioning since it embodied many praiseworthy features.

For the purpose of policing the most populous area of the state, this district, composed of Orleans, Jefferson, and St. Bernard parishes, was created. The district was divided into precincts, and provision was made for all the necessary patrolmen and officers. The governor appointed a police board which in turn appointed the chief of police and the other superior officers. The cities and parishes included in the area were required to pay the expenses of the organization according to an apportionment based upon the services rendered. A similar organization, the Metropolitan Sanitary Company, was created with the same boundaries and with like powers and jurisdiction over all questions of sanitation and health. It is interesting to note here that the Slaughter House Cases of 1873 arose from the activities of this district.

The new charter of 1882 went back to 1852 and resurrected the mayor council form of government.[64] The executive power was vested in a mayor, treasurer, comptroller, commissioner of public works, and a commissioner of police and public buildings, all elected on a general ticket for four year terms. The council consisted of thirty members elected for four years, one-half elected every two years. The mayor presided over meetings of the council. The other executive officers had seats on the floor of the council, could debate

[63] *Idem.* Also see *Carrollton v. Metropolitan Police*, 21 La. Ann. 447 (1869).
[64] *Acts of La.*, 20 of 1882.

and discuss, but had no vote. All executive officers were subject to impeachment and removal by the council.[65] The mayor had the power to veto acts of the council subject to a two-thirds affirmative vote.

In 1896 a new charter was secured but the new government was essentially the same as the older one. The membership of the council was reduced to seventeen. The old municipal districts, seven in number, were still retained. A police board was once more provided to supervise all police matters in the city.

The history of the government of Orleans Parish and New Orleans is an interesting one in view of their ultimate consolidation and because of the many governmental changes experienced by the city. It is entirely probable that, had New Orleans been allowed to go its own way undisturbed and unmolested, through slow governmental evolution it would have eventually found itself with a form of government suitable to its needs and desires. But the Civil War and the Reconstruction Period created a situation so distasteful to its citizens that a complete reversal of policy occurred and a wave of reaction set in which is just beginning to disappear. The present government of New Orleans is but another step forward, defective though it may be.

Suffrage and Elections

Under the Constitution of 1812 the parish served as the election unit.[66] Ballots were received by the parish judge in the presence of and with the consent of two justices of the peace appointed as election commissioners by that judge. The parish judge and the commissioners counted the ballots and made returns to the governor within sixty days after the election. When the election unit consisted of more than one parish, the parish judges and the commissioners jointly acted as election officials. The judges and the commissioners kept a list of those voting and no person voted whose name did not appear on the tax list. They were given general discretionary powers in regard to interpreting the rules and regulations concerning elections. The parish judges and justices of the peace divided the parishes into election dis-

[65] *State v. Judges*, 35 La. Ann. 1075 (1883).
[66] Digest of 1828, *op. cit.*, Vol. I, pp. 424-448.

tricts, and the sheriff of each parish, or a deputy, was required to be present at each polling booth with the tax list, or a copy, for the purpose of checking off the names of those qualified to vote.

In 1855 police juries were authorized to lay out all election precincts.[67] Elections were completed in one day. Polling booths were presided over by the commissioners appointed annually by the police juries. Election commissioners were required to keep duplicate lists of all persons voting, and they counted the votes, making duplicate returns to the returning officer of their parish. They were authorized to issue oaths of affirmation. Voters were required to write or print on each ticket the names of the candidates, and their respective offices, for whom they were voting. The sheriff, acting as the returning officer of the parish, compiled all returns, from the lists sent in by the commissioners, in the presence of at least two persons, and made public proclamation of the result. A third copy was deposited with the clerk of the district court. Contested elections were decided before the district court having jurisdiction, within at least ten days after the disputed election.

Under the Constitution of 1852 a system for registering the voters was put into effect and changes also resulted in the conduct of elections.[68] A state registrar of voters was appointed by the governor for two years, and, in addition to other duties, he acted as supervisor of registration of the Parish of Orleans. In the other parishes the governor appointed supervisors of registration for terms of two years. Their duties were to register every qualified voter of the parish, and to list those registered according to police jury wards. They were required to revise the list of registered voters before each and every parish, city, town, or ward election, and had to close such lists nine days before any election. Published notice of revision was required. The decisions of parish supervisors were final. The finished lists were forwarded to the state registrar within ten days after the election, and the register books were returned for certification to the district clerk, who then forwarded them to the state registrar.

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[67] Revised Statutes of 1856, *op. cit.*, pp. 210-217.
[68] Digest of 1870, *op. cit.*, Vol. I, pp. 565-586.

For the purpose of conducting elections, three commissioners were appointed by the parish supervisor for each polling place. They kept lists of those persons voting, and delivered these with the ballot box to the supervisor of registration after each election. The supervisor of registration was required to conduct each city, town, parish, or charter election held within his particular parish, and made his report to the returning officers of the state. These officers were the governor, the lieutenant governor, the secretary of state, and two citizens selected by the first three members. Contested elections were decided by jury trial.

Education and Schools

The public school system of Louisiana has had a varied and interesting history. Poorly organized and equipped as it was in the first few years of statehood, nevertheless, an effort for improvement, more or less constant, is seen to be operating down to the present.[69] The type of administration of the parish schools indicates the degree of central supervision exercised. The pendulum swung from one extreme to the other. In 1870 the whole school system of the state assumed the form of a gigantic pyramid with the governor at the apex.

In 1821 all police juries were authorized to levy a tax, not to exceed a total amount of one thousand dollars per parish, for the purpose of education. Funds collected for the use of schools were accounted for to the trustees of the schools. Grand juries were to inquire into the employment of all money drawn from the state by the trustees for the use of schools.[70]

In 1827 police juries were authorized to appoint a board of administrators, of five members, for the general administration of the schools of each parish.[71] The boards appointed their own officers. Each year they appointed in each ward of their respective parishes three citizens (heads of families) as school trustees in that ward. Ward trustees exercised general supervisory powers over their respective wards but were responsible to the parish administrators for their offi-

[69] See Ficklen, *op. cit.*, pp. 122-124, for a short description of the beginning of the state educational system.
[70] Digest of 1828, *op. cit.*, Vol. II, pp. 851-852.
[71] *Ibid.*, pp. 855-859, 461-462.

cial acts. They were required to report to the parish administrators, and the latter published an annual statement concerning the parish school system. The administrators apportioned the state funds, granted to the various parishes, among the school wards. Free students were limited to a hundred for each school.

Parish superintendents of schools were provided in 1847, elected in each parish for two year terms.[72] They acted as parish treasurers for school funds and were required to give bond. They exercised general supervisory powers over the parish school system. Police juries and parish superintendents were authorized to lay out school districts, in each of which three school directors were elected annually. They exercised the powers of the former school trustees. A general property tax of one mill on the dollar of the assessed valuation of all taxable property was levied throughout the state, the proceeds of which were prorated among the parishes for educational purposes.

By 1856 the financial duties of the parish superintendent had been delegated to the parish treasurer.[73] Police juries were empowered to prescribe the qualifications of teachers. The boards of directors of each school district were given corporate powers and were required to make an annual report before each election. If additional money for the support of the school or schools was necessary, other than the amounts received from the state and parish, such amounts were raised by a tax levied on all taxable property within the district. But no tax was assessed or levied for the building of a schoolhouse in any district without the consent of a majority of the qualified voters being first obtained in an election held after thirty days notice had been given.

In 1870 the educational system of the state saw numerous changes.[74] The state was divided into six educational divisions or districts. Superintendents of these districts were appointed by the governor on nomination by the state superintendent of education. The state board of education appointed the school directors (from three to five in number) for each of the above mentioned districts. School directors were also appointed for all incorporated towns and cities. The

[72] Revised Statutes of 1852, *op. cit.*, pp. 228-239. The origin of school districts in Louisiana probably lies in this period.
[73] Revised Statutes of 1856, *op. cit.*, pp. 190-195.
[74] Digest of 1870, *op. cit.*, Vol. I, pp. 521-542.

office of parish superintendent was abolished and a board of parish directors (consisting of five or more members) was appointed for each parish by the state board of education. The district and parish boards held office for two years. Police juries were authorized to levy a tax, not exceeding two mills on the dollar in any one year, to be apportioned among the school districts of the respective parishes in proportion to the number of educables in each district. In each school district of the various parishes a board of three directors was appointed. In any school district the qualified voters were authorized to vote a tax of not more than ten mills on the dollar for any one year on all taxable property within that district for school purposes.

Taxation and Finance

Certain restrictions and limitations were placed on the taxing and fiscal powers of local governing bodies during this period, of which the following are important examples, and are probably fore-runners of similar restrictions found in the constitution and statutes of today.

In 1855 parishes and municipalities were prohibited from incurring debts or liabilities without providing in the ordinance creating a debt or liability the means of paying the principal and interest.[75] The ordinance was to remain in full force until the debt and interest had been paid. District judges, on the motion of the attorney of any creditor of a political corporation, were to issue mandates to the sheriffs or other tax collectors to proceed to collect taxes providing for the payment of principal and interest of the liability or indebtedness contracted should the police jury fail to do so.

No municipal corporation could levy a tax for any purpose which exceeded two per cent of the assessed cash value of all property listed for taxation.[76] Neither could any police jury levy a tax for parish purposes the rate of which exceeded one hundred per cent of the state tax for that year, unless such excess was sanctioned by a majority of the voters of that district at an election held for that purpose. No municipal corporation could levy a poll tax. Police juries were prohibited from making appropriations or expenditures for

[75] Revised Statutes of 1856, *op. cit.*, p. 345.
[76] Digest of 1870, *op. cit.*, Vol. I, pp. 855-856.

road purposes or for bridges until provision had been made, by laying a special tax, for the payment of such appropriations or expenditures. Whenever a parish tax was levied for road purposes, the amount of the tax collected in municipal corporations within the parish, less the expense of the collection, was paid into the treasury of such corporation to be expended on roads, streets, or bridges. Police juries and municipal governing bodies were authorized in 1867 to let contracts for the opening and repairing of roads and bridges, provided, however, that the amounts involved in such contracts did not exceed the funds in the treasury or the amounts from taxes levied for that purpose.[77]

This brief survey of the limitations and restrictions placed on the taxing power of local governing bodies and on the power to incur debts and liabilities, illustrates the growing tendency of the state legislature of this period to attempt a general supervision of local finances.

On March 27, 1813, all police juries were authorized to appoint three resident citizens of their respective parishes, who were property holders, to assess all real estate within those parishes.[78] Tax rolls were to be completed by them within forty days after their appointment. The revision of the published rolls took place within the last ten days of the period allowed for completion, and the rolls were then given to the parish judge. A copy of the rolls was also sent to the state treasurer. Assessors were paid at the rate of two dollars per day by the parish for not more than forty days, and twenty dollars each by the state treasurer on warrant by the sheriff. Municipal assessments could be made from these rolls or by separate municipal assessors.

By 1828 assessors could demand a written declaration, given under oath, of all taxable property.[79] No assessment was considered valid unless made by two of the three assessors appointed. In 1821 the time limit of forty days was extended to ninety days. Parish judges were required to compute the taxes due, from the information supplied in the tax rolls, certify the amounts and have three copies made of the finished rolls. One copy was sent to the state treasurer, one copy to the tax collector, and the other copy was sent to

[77] *Ibid.*, p. 840.
[78] Digest of 1816, *op. cit.*, Vol. III, p. 866.
[79] Revised Statutes of 1852, *op. cit.*, p. 489.

the clerk of the house of representatives of the general assembly. By 1846 one tax assessor was elected for each parish for a term of two years.

All assessors were required to give bond, in 1856, with proper security, for five hundred dollars.[80] All property was assessed in the parish in which it was situated, and every person was assessed in the parish where he resided. Assessments were made between the first Monday in April and the first Monday in October each year. Assessment rolls were delivered to the parish recorders. For compensation, assessors were allowed not less than two hundred dollars. They received three per cent of the total of ordinary taxes assessed and one per cent on poll and license taxes collected. Every two years they were required to take a census of the white children of the state between the ages of six and sixteen years, designating the number of each sex in each school district. For this they received three dollars per hundred children listed.

By 1870 the parish tax collectors made out the tax rolls and also collected taxes.[81] One tax collector was appointed by the governor for two years in each parish. The tax collector listed all property subject to taxation, and tax rolls were deposited with the respective parish recorders. The property listed on the tax rolls was assessed by the clerks of the district courts, the parish recorders, and the sheriffs, acting together for each parish. Assessing officers received seven hundred dollars each.

On March 25, 1813, the sheriff of each parish was made ex officio collector of taxes, state and parish, except in those parishes where the parish judge and the police jury appointed a tax collector.[82] Under this provision sheriffs were required to collect and account for all taxes that were levied in their respective parishes, and were allowed five per cent on the total amount of taxes collected as compensation.[83] Each sheriff, or tax collector, was bonded for a sum equal to the whole amount of state and parish taxes and twenty-five per cent over and above that amount.[84] By 1828 collectors were required to give thirty days notice, before the col-

[80] Revised Statutes of 1856, *op. cit.*, pp. 123, 459-470.
[81] Digest of 1870, *op. cit.*, Vol. I, pp. 305-316; Vol. II, pp. 472-487.
[82] Digest of 1816, *op. cit.*, Vol. II, p. 326.
[83] *Ibid.*, Vol. III, p. 380.
[84] *Ibid.*, p. 366.

lection of taxes started, by means of posters or advertisements in newspapers.[85] In 1847 sheriffs were elected for two years.[86] Sheriffs and tax collectors were required to give bond for the full value of expected collections.[87] Tax collectors, who were separate officials in the various parishes in 1870, not only listed all property subject to taxation, but after that property had been assessed they collected the taxes due. All tax collectors were appointed by the governor for terms of two years.[88]

Since 1812 parish treasurers have always been appointed by the police juries of their respective parishes.[89] They received all the money due or belonging to the parish. They kept accounts of all receipts and expenditures, recorded all claims presented for payment, paid no claims unless they had been previously allowed by the police jury or other responsible court or officer of the parish, and they were required to submit a financial report to the police jury at every regular meeting. They were forbidden to hold the office of tax collector at the same time.[90]

The duties of parish treasurers had been increased by 1870 to include the direction of prosecutions ordered by the police juries for the collection of debts due the parishes. They were also required to deposit a financial statement of all state and parish accounts with the parish recorder every six months.[91]

Roads, Levees, and Other Public Works

For the most part all works of a public character were entrusted to local supervision and control. The movement toward the centralization of administrative functions under the supervision of the state government had not then been initiated, and today is only beginning to be realized.

Inspectors with the power to inspect and supervise the construction and maintenance of works authorized were appointed in 1816 by the police juries.[92] In 1818 police juries were authorized to appoint road juries, consisting of at least

[85] Digest of 1828, *op. cit.*, Vol. III, p. 453.
[86] Revised Statutes of 1852, *op. cit.*, p. 357.
[87] Revised Statutes of 1856, *op. cit.*, pp. 128, 459-470.
[88] Digest of 1870, *op. cit.*, Vol. I, pp. 305-316, Vol. II, pp. 472-487.
[89] Digest of 1828, *op. cit.*, Vol. II, p. 242.
[90] Revised Statutes of 1856, *op. cit.*, pp. 396-398.
[91] Digest of 1870, *op. cit.*, Vol. II, pp. 307-309.
[92] Digest of 1816, *op. cit.*, Vol. II, p. 604.

six freeholders, to lay out all proposed parish and state roads within their respective parishes. All such roads were considered as public roads. These road juries assessed the damages sustained by property holders in the laying out of proposed road systems. For the supervision of repairing and constructing roads police juries were authorized to appoint road overseers each year, the latter being empowered to summon all male inhabitants from fifteen to forty-five years of age for work on roads within their respective jurisdiction. For this purpose the parishes were divided into as many road districts as the police juries thought necessary, each in charge of an overseer. Police juries were also authorized to contract for toll bridges to be built over large streams. Parish regulations regarding levees, as enacted prior to 1812, remained in force.[93]

District judges in 1842, were authorized to charge grand juries to inquire into the state of roads and levees in their respective parishes.[94] The rule had been established by 1856 that all levees were to be made by riparian owners.[95] Such owners were also required to construct and maintain roads along the frontages of their lands and to give them to the public. Regulations were enacted regarding the construction and maintenance of irrigation canals. The police juries annually appointed inspectors for all work on roads, levees, bridges, and canals. These inspectors were required to make weekly tours during high-water stages and were empowered to order out every man in the vicinity when necessary. On the thirtieth of August, every year, the inspector, with a planter as witness, inspected all roads, levees, bridges, and canals within his district. Planters were liable for all damages due to their carelessness, or due to their failure to provide labor or materials in the construction of levees and canals. Levees of parish-wide importance were constructed and maintained by a proportionate requisition upon the inhabitants.

Special Municipal Corporations

The development in number and in scope of special municipal corporations in Louisiana since 1921 has been most significant. An attempt is made here to indicate their origin

[93] Digest of 1828, *op. cit.*, Vol. II, pp. 811-818.
[94] Digest of 1870, *op. cit.*, Vol. II, p. 509.
[95] Revised Statutes of 1856, *op. cit.*, pp. 480-490.

and beginnings. Attention has already been directed to road and school districts. Other special taxing areas provided for since then include levee districts, drainage and reclamation districts, sewerage districts, navigation districts, waterworks districts, and irrigation districts.

The first levee district, as such, seems to have been created in 1853, and was composed of the parishes of Carroll, Madison, and Catahoula.[96] Prior to this time riparian owners of the property had been compelled to see to the direction and care of adjacent levee systems. Evidently, this new area was so successful that an attempt was made in 1868 to provide a similar system for the whole state.[97] In that year a board of public works was established for the state at large, and five subordinate levee districts were created. But in the aftermath of reorganization under the Constitution of 1879 this system was abolished and then recreated along similar structural lines.[98] Under the present organization the district levee boards are largely autonomous, and the state board of engineers acts as a correlating body.

Drainage had likewise been considered a personal question of individual landowners, but collective action for one section of the state was provided as early as 1858. In that year Orleans and Jefferson parishes were established as a drainage district under its own board of commissioners.[99] The same legislature appropriated various sums of money for reclamation work in certain areas, but reclamation districts as such were not provided for until the adoption of the Constitution of 1864. This constitution and that of 1868 were so short-lived, however, that nothing was really accomplished in this direction until after the adoption of the Constitution of 1879.[100]

Sewerage districts for municipalities appear to have been first provided for in 1908,[101] and it was not until after the adoption of the Constitution of 1921 that rural areas were authorized to have sewerage districts.[102] In 1914 navigation districts were provided for, but subsequent legislation made the parish a unit for this activity.[103] In 1912 municipalities

[96] *Acts of La.*, 70 of 1853.
[97] *Ibid.*, 72 of 1868.
[98] See Section on Levee Districts in Chapter on Special Municipal Corporations.
[99] *Acts of La.*, 165 of 1858.
[100] *Ibid.*, 87 of 1894. See also Art. 281 of *Const. 1898*, as adopted 1913.
[101] *Ibid.*, 285 of 1908.
[102] See Chapter on Special Municipal Corporations.
[103] See Chapter on Other Local Functions and Activities.

were authorized to own and operate waterworks,[104] but not until after the adoption of the Constitution of 1921 were rural areas authorized to establish waterworks and irrigation districts.[105]

Conclusion

Beginning with the Constitution of 1845 and continuing down through the period immediately preceding the Civil War a trend to subject all local officers to popular election and control is observed. It is quite possible that the highly aristocratic Constitution of 1812, patterned largely on that of Kentucky, was responsible for this movement, for originally all local rural officers were appointed.

Two constitutions were framed during the federal occupation of Louisiana and during the Reconstruction Era, those of 1864 and 1868. They were not based upon popular approval and the state as a whole has never recognized them as having been state constitutions. One of them incorporated a bill of rights, never before included in a Louisiana constitution, and both of them broadened the basis of suffrage so as to include the newly freed negroes. Several striking innovations with respect to local government were effected during this era and, no doubt, would have been hailed with satisfaction in another day. But no follower of the old school democracy could accept them, and after the adoption of the Constitution of 1879 and the reestablishment of white democratic supremacy, everything in any way connected with the Reconstruction Era was either abolished or repealed.

Since then, changes have been few and slow of accomplishment. Whether this is due to an inherent conservatism or to a distrust of new things is difficult to determine. In many instances political and social life in Louisiana is much more democratic than in several northern states. In other respects the state is distinctly reactionary. At present, though, it appears as though an awakening process is taking place. Strange contemporary problems are forcing new attitudes, and public leaders are leaving behind them their former provincial ideas. In a day when political leadership means as much as it does now in Louisiana, much can be accomplished

[104] *Acts of La.*, 248 of 1912.
[105] See Chapter on Special Municipal Corporations.

in the field of public administration if the leaders have the courage to act.

This general survey of local government in transition concludes the study of local areas in their development and evolution. Local governmental institutions of Louisiana have been affected by three countries, France, Spain, and the United States. This foregoing study is an attempt to place and identify those effects. Government is not static, it is constantly in transition, and the development of local organization in Louisiana is indicative of this governmental quality. The popular reaction against existing forms of government, and the desire to reestablish ante-bellum institutions, prompted a general reorganization after the Reconstruction Era. The realization of that objective, and subsequent changes, have together resulted in the local organization of today.

PART III

CHAPTER VI

Local Government Areas

All local government areas in Louisiana may be grouped into three classes: parishes, municipalities, and special taxing districts. Louisiana does not follow the legal philosophy of the common law, but has, as a basis of civil relations, a civil code;[1] and according to provisions contained in the code there seems to be little difference between areas of local government with respect to their legal status. In the main, however, both the legislature and the courts have brought into the jurisprudence of the state, that they have helped to create, a number of common law doctrines. This is particularly true in the field of municipal corporations. And the extent to which these doctrines have been applied has been governed in part by the discretion of the courts. Thus, on the whole, common law doctrines usually have been followed with regard to the legal position of local government areas. Certain minor differences do seem to exist, however, so that it is difficult to generalize to any great extent. For this reason a comparative treatment of this subject was deemed the wisest course to follow.

Political Corporations in The United States Generally

A public corporation is a corporation created by the state, solely as its own device and agency for the accomplishment of part of its own public work. Public corporations are of two kinds, municipal and non-municipal.[2] Non-municipal corporations include, for example, state boards of education, state boards of health, and others of this type, and are statewide in character, thus differing from municipal corporations which are essentially local in scope. A municipal corporation is a corporation which has received a charter as a device and agency of the state for the accomplishment of work of local government within a designated area, and to that end is entrusted with broad powers of local legislation and administration.[3] The charter may be a special one, or it may be a gen-

[1] See the Chapter on Local Government, 1812-1877.
[2] Elliott, C. B., *Municipal Corporations*, 3rd ed., p. 1.
[3] *Ibid.*, pp. 1-2.

eral law applying to more than one area. A municipal corporation comprises as its members the inhabitants of the area. Thus it includes both the designated area and the inhabitants residing therein, and the fundamental idea of a municipal corporation is the investing of the people of a place with the local government thereof. A city is a municipal corporation. A municipal corporation has also been defined as the incorporation by the authority of the government of the inhabitants of a particular district, authorizing them in their corporate capacity to exercise subordinate specified powers of legislation and regulation with respect to their local and internal concerns.[4]

If the organization of a local area is less formal, however, and its powers are limited and minor, it is sometimes described, and even defined by statute, as a municipal corporation, while sometimes its special character is indicated by calling it a municipal quasi-corporation. Counties and townships (the term "towns" is used by the authority quoted) are usually municipal quasi-corporations.[5] Just where the line should be drawn between municipal corporations and quasi-corporations is often difficult to determine. The important point here is, that however designated, there are two groups of municipal corporations—those with larger powers, like cities, and those with smaller powers, like counties; that all of them have some of the characteristics of corporations, and are sometimes so named by statute; and that with all of them, apart from possible provisions of the state constitution affording them protection, a municipality is merely a department of the state, and the state may withhold, grant, or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the state, exercising and holding powers and privileges subject to the sovereign will. The term quasi-corporation, when correctly understood in this connection, serves as a convenient indication of the relatively minor status of counties, townships (the term "towns" is used by the authority quoted), and special local districts as ordinarily constituted.[6]

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[4] Dillon, J. F., *Municipal Corporations*, 5th ed., sec. 32.
[5] Elliott, *op. cit.*, p. 2.
[6] *Ibid.*, p. 9.

Elliot, therefore, identifies taxing districts with counties and townships, all, of course, being public corporations, but with more limited powers than full municipal corporations. Another authority makes this distinction even greater. He states that all corporations intended as agencies in the administration of civil government are public as distinguished from private corporations. Thus, an incorporated school district, or county, as well as a city, is a public corporation; but the school district, or county, properly speaking, is not, while the city is, a municipal corporation. All municipal corporations are public bodies, created for civil or political purposes; but all civil, political, or public corporations are not in the proper use of language, municipal corporations.[7] As is seen, then, both Elliot and Dillon identify special taxing districts with counties and townships as quasi-corporations, and distinguish them from full municipal corporations, the true distinction seeming to be that quasi-corporations are more limited in purpose and in authority than are full municipal corporations.

In Louisiana

A corporation is an intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other. Thus the body continues always the same, notwithstanding the change of the individuals that compose it, and the body created for certain purposes, is considered as a natural person.[8] The purpose of corporations is to contribute by the union and assistance of several persons, to the promotion of some object of general utility, although they be at the same time established for the advantage of those who are members of such corporations.[9]

Political corporations are those which have principally for their object the administration of a portion of the state, and to whom a part of the powers of government is delegated to that effect.[10] Thus a political corporation is one created for political purposes, with political powers to be exercised

[7] Dillon, *op. cit.*, sec. 10.

[8] Dart, B. W., *Civil Code of Louisiana*, arts. 427-428. It is not contended by the writer that the law of local political corporations of Louisiana is based upon the general provisions on this subject found in the Civil Code. But the germ of the doctrines peculiar to Louisiana's treatment of this rather important subject may lie in this code. At any rate, for comparative purposes, it seems of sufficient interest to the writer to include the code provisions.

[9] *State v. Guarantee Co.*, 26 So. 600, 51 La. Ann. 1874 (1899).

[10] *Civil Code*, art. 428.

for the public good in the administration of civil government, subject to the control of the legislature, and its officers are officers of government for the administration and discharge of public duties.[11] Parishes, municipalities, special taxing districts, and their governing officers are political corporations.[12]

Special Legislation

Certain constitutional limitations and restrictions restrain the legislature with regard to legislation affecting local government areas.[13] No local or special law may be passed on the following subjects:[14] the conduct of elections or the place of voting; the venue in civil or criminal cases; road, highway, or street systems, or local franchises to public utilities; the creation of corporations or the changing of their charters; the grant of any special or exclusive right, privilege, or immunity to any corporation, association, or individual; changing the time for the assessment and collection of taxes, or the duties of assessors or tax collectors; the practice or jurisdiction of any court; exempting property from taxation; public schools or revenues raised for such purposes; or legalizing unauthorized or invalid acts of state or local officers.

The organization of parishes, levee districts, river and harbor improvement districts, navigation districts, and all municipalities with populations of twenty-five hundred or more,[15] are excepted from the effects of this provision. However, no local or special laws may be passed on any subject not enumerated in the preceding list unless public notice has been given for at least thirty days prior to the introduction of such subject matter in the legislature.

Creation, Change, and Extinction of Political Corporations

Corporations must not only be organized by the legislature, or established according to law, but a name must be

[11] *De Pew v. Drainage Dist.*, 105 So. 78, 158 La. 1099 (1925).

[12] *McGuire v. Bry*, 8 Rob. 196 (1842); *City v. Grailhe*, 9 La., Ann., 561 (1854); *State v. Hardin*, 49 So. 490, 123 La. 736 (1909); *N. O. v. Rüsse*, 113 So. 879, 164 La. 869 (1927); *State v. Kohnke*, 38 So. 793, 109 La. 838 (1903).

[13] *Const. 1921*, art. 4, sec. 4.

[14] Local or special legislation affects special or particular places, or special and particular persons, and is distinguished from a statute intended to be general in its operation and relating to classes of persons or subjects. *Charbonnet v. Forschler*, 70 So. 224, 138 La. 279 (1915).

[15] *Swords v. Baillio*, 29 So. 943, 105 La. 328 (1901).

given to them; and it is in that name that they must sue or be sued and do all their legal acts, although a slight alteration in this name is not important.[16]

The legislature may establish and organize new parishes, which will have a corporate existence and which may exercise corporate powers according to the law.[17] No new parish may, however, contain less than six hundred twenty-five square miles, nor may it contain less than seven thousand inhabitants, and no existing parish may be reduced below that area or number of inhabitants.[18] Under these restrictions the legislature may dissolve or merge any parish into a new parish, with the approval of two-thirds of the qualified voters voting in the parish to be merged. The voters of a new parish, or parishes, into which an existing parish is to be incorporated need only signify their assent by a majority vote.[19] Whenever a parish is enlarged or created from territory contiguous to it, it is entitled to a just proportion of the property and assets, and is liable for a just proportion of the existing debts and liabilities, of the parish or parishes from which the territory is taken. All laws changing parish lines or removing parish seats must be submitted to the voters of the parish or parishes concerned for their ratification at a special election held for that purpose, and the lines or seat must remain unchanged unless two-thirds of the total vote cast in each parish approves the proposed change.[20]

After the act which establishes a new parish has become effective, the governor is required to appoint a temporary governing body, or police jury, of five members, a registrar of voters, and a member of the board of election supervisors, for the parish. These officers serve until their successors have been appointed or elected, and have qualified. Within ten days after their appointment the police jury must meet and arrange for an election to select a parish seat. The parish is divided into five wards, voting precincts are provided, and

[16] *Civil Code*, art. 482. Thus a municipality, parish, or special district may sue or be sued as such or as the mayor and council, police jury or board of commissioners. The former method is preferable. *Parish v. Police Jury*, 88 So. 250, 145 La. 1058 (1919).

[17] *Const. 1921*, art. 14, sec. 1; *Acts of La.*, 27 of 1910. This is a general law. But see *Acts of La.*, 15 of 1910 and 6 of 1912 whereby Evangeline and Allen Parishes were created by special acts.

[18] *State v. Judge*, 8 So. 305, 42 La. Ann. 1104, (1890); *State v. Sanders*, 57 So. 924, 130 La. 272 (1912).

[19] *Const. 1921*, art. 14, secs. 4-5; *Sandoz v. Sanders*, 51 So. 436, 125 La. 896 (1910).

[20] *Ibid.*, sec. 2; Sandoz v. Sanders, *supra*. For boundary surveys see *R. S.*, secs. 2624-27 and *Caddo Parish v. Bossier Parish*, 113 So. 882, 164 La. 378 (1927). Parish boundaries are changed by ordinance of the police juries affected and a two-thirds popular vote in the same parishes. *Acts of La.*, 88 of 1928.

the polling places designated. At the same meeting the police jury must also fix a date for the election of parish, district, and ward officers. Such an election must take place within sixty to ninety days after the date of the police jury meeting. As soon as the parish has been divided into wards the registration of voters takes place. After the parish seat has been selected the police jury is required to provide the necessary grounds, buildings, offices, and equipment for parish and district officials.

When two-thirds of the qualified voters of a hamlet or unincorporated village petition the governor for incorporation, and include in the petition the boundaries of the proposed area and the number of residents, which must be at least one hundred fifty, if the petition is satisfactory and the facts contained in it are correct, the governor by proclamation declares the village incorporated, outlines its boundaries, and states its name.[21] The officers of a newly created municipal corporation are appointed by the governor and serve until their successors are elected and have qualified for office.

The boundaries of existing villages, towns, or cities may be changed by the governing authorities concerned when petitioned to do so by twenty-five per cent of the number of property owners and of the property assessed within the area to be included.[22] An ordinance must be adopted defining the territory to be included and the new boundary, but it does not become effective until one month after passage and publication in a local newspaper. Municipalities may consolidate, merge, or absorb one another when a majority of the qualified voters in each municipality affected vote in favor of such action in an election held for that purpose. These provisions apply only to municipalities in the same parish.

With the exception of levee districts, river and harbor districts, and school districts, all special taxing districts are created by the police jury or by the municipal governing body, acting on their own initiative or by petition of the necessary

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[21] See Chapter on Municipal Government.

[22] *Acts of La.*, 85 of 1924, as amended by *Ibid.*, 149 of 1928. See *Const. 1921*, art. 14, sec. 10; *Harvey Co. v. Gelbke*, 118 So. 75, 166 La. 896 (1928); *Lawrence v. Mansfield*, 56 So. 688, 129 La. 672 (1911).

number of resident taxpayers.[23] In all such instances public hearings must be held for the purpose of considering conflicting views or testimony. Where the police jury or the municipal governing authority is the governing body of the district, however, an election must ratify their creation of the district. For other districts the open hearing is sufficient. Boundaries of special districts may be changed according to the same procedure, but nothing may be done to disturb the existing debts or obligations of areas concerned in the change.

A corporation legally established may be dissolved by an act of the legislature if that body deems it necessary or convenient to the public interest, provided, that when the act of incorporation imports a contract, on the faith of which individuals have advanced money or have engaged their property, it cannot be repealed without providing for the reimbursement of the advances made, or without making full indemnity to such individuals.[24] A corporation may also be dissolved by forfeiting its charter when it abuses its privileges, or refuses to accomplish the conditions on which such privileges were granted, in which case the corporation becomes extinct by the effect of the violation of the conditions of the act of incorporation.[24a]

Since parishes are agents of the state and representative areas, in addition to being local governing areas, they may not be dissolved or become extinct except by act of the legislature or through consolidation or merger with other parishes.

Municipalities with populations of less than one thousand may be dissolved by their governing authorities after the following conditions have been met. A petition by a majority of the taxpayers of the area must pray for dissolution or rescission of the charter. The mayor is then required to call a special election. If two-thirds of the taxpaying qualified residents vote in favor of such action, the charter is ipso facto dissolved and rescinded, and the governing au-

[23] See Conclusion of Chapter on Special Municipal Corporations. Levee districts and river and harbor districts are created by the legislature. Parish school boards create school districts and are bound by the same limitations as are police juries.

[24] *Civil Code*, art. 447.

[24a] The legislature has not acted in this field.

thorities are required to liquidate the affairs of the municipality as soon as possible.[25]

Special taxing districts may be dissolved and become extinct only after they have fulfilled the purposes for which they were created and after all debts and obligations have been retired.[26] Recent legislation has made possible the consolidation of road, school, and drainage districts, but in each case provision must be made for the obligations and debts of the disappearing areas.

Powers and Limitations[27]

Since a corporation is an intellectual being it follows that it cannot personally transact all that it has a legal right to do. Hence it becomes necessary for each corporation to appoint some of its members to whom it entrusts the direction and care of its affairs, under the name of mayor, president, syndics, directors, or others, according to the statutes and qualities of such corporations.[28] The statutes and regulations which corporations enact for their police and discipline, are obligatory upon all their respective members who are bound to obey them, provided such statutes contain nothing contrary to the laws, to public liberty, or to the interest of others. In each corporation the act of a majority of its members is considered as the act of the whole corporation.

Corporations are intellectual beings, different and distinct from all the persons composing them, and they have a separate legal personality.[29] Thus the right of succession is inherent to their nature, and as long as they exist they transmit their rights and their property to their successors. The estate and rights of a corporation belong so completely to the body composing it that no individual member can dispose of any part of them.

Corporations legally established are substituted for persons, and the union of the latter which renders all interests, rights, and privileges common to all who compose them, is the reason why they are considered as one single whole.[30]

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[25] *Acts of La.*, 178 of 1894. Also see *Ibid.*, 224 of 1934, providing for the dissolution of municipalities with populations of not more than twenty-five hundred.

[26] See, for instance, *Acts of La.*, 274 of 1926, providing for the dissolution of navigation districts. See also Chapter on Special Municipal Corporations.

[27] See Chapter on Special Municipal Corporations.

[28] *Civil Code*, arts. 438, 444, 445.

[29] *Ibid.*, arts. 434-436.

[30] *Ibid.*, art. 433.

Hence it follows that they may possess an estate, and have a common treasury; they are capable of receiving legacies and donations; they may make valid contracts, obligate others and obligate themselves toward others; exercise the rights which belong to them; manage their own affairs; appear in courts of justice; and even enact statutes and regulations for their own government, provided such statutes and regulations are not contrary to the laws of the political society of which they are members.

It follows, then, that for each political subdivision of the state created, a governing body is provided, and, unless exceptions are made and certain powers vested in its members,[31] all of its powers are exercised by the representative body.

The powers of all political corporations of the state are delegated either by statute or by the constitution, and the maxim that legislative power must not be delegated has no application to political subdivisions created for the purpose of local government.[32] On the other hand, the legislature cannot deprive a parish or municipality of its autonomy as a political corporation established by the constitution, or of its capacity to discharge its functions as such by withdrawing from it such power, authorized by the constitution, as may be necessary.[33] Under this restriction, however, the powers of local governments are simply delegations of the powers of the state government; and both state and local governments are in the same manner and to the same extent subjects of legislative control and discretion.[34] So far has this idea of the delegation of state power gone, that it is within the power of the legislature to delegate to local authorities full and plenary authority to regulate certain activities and to make a violation of such regulations an offense against the state.[35]

In exercising the powers of local government delegated to them, the governing authorities of political corporations are vested with large discretion in their fields of action, and

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[31] Such as voting special taxes or bonds.
[32] *State v. Westmoreland*, 68 So. 502, 133 La. 1015 (1913); *N. O. v. Morgan*, 7 Mart. (N. S.) 1 (1828).
[33] *Williams v. Police Jury*, 65 So. 604, 135 La. 445 (1914).
[34] *Moore v. N. O.*, 32 La. Ann. 726 (1880); *State v. Isaacson*, 32 La. Ann. 1306 (1880); *State v. N. O.*, 35 So. 605, 111 La. 874 (1903).
[35] *State v. Harper*, 7 So. 446, 42 La. Ann. 312 (1890); *Police Jury v. Harper*, 7 So. 716, 42 La. Ann. 776 (1890).

it is only when they commit abuse and injure their principals that the judiciary will extend any protection.[36]

On the other hand, the governing authorities of political subdivisions can exercise only such powers as have been granted by express terms, or such as are implied from or are incidental to the powers expressly granted.[37] Here, it seems, is the American common law doctrine so well described by Dillon.[38] Whether the state courts brought in this doctrine in order to check the growing authority of local government areas or whether they adopted it as a means of holding political corporations to a strict accountability for the broad powers delegated to them, is not clear. The practical result of this attitude of the courts may be seen by examining the special and general charters of municipalities and the statutes with respect to parishes and special taxing districts, wherein it appears that the legislature has constantly sought to remove judicial objections by granting local governing powers of almost every description. Constitutional conventions have also removed many judicial obstacles to the exercise of certain questionable local powers.[39] At any rate, the student of local government cannot complain that local powers in Louisiana are of an extremely restricted and limited character.

In addition to the usual powers of local areas, both in number and in scope, the legislature has vested the use of the state police power for many purposes in parishes, municipalities, and in certain special districts.[40] Due to the unusually broad conception of the scope of the police power in Louisiana,[41] local government areas have rather extensive powers of a regulatory character. Health, sanitation, liquor regulations, food and meat shops, dance halls and cabarets,

[36] *Cruse v. Police Jury*, 92 So. 679, 151 La. 1056 (1922); *State v. N. O.*, 27 So. 572, 52 La. Ann. 1268 (1900).

[37] *State v. Miller*, 41 La. Ann. 52 (1899); *N. O. Ry. Co. v. N. O.*, 34 La. Ann. 429 (1882); *State v. Shreveport*, 33 La. Ann. 1179 (1881); *School Board v. Trimble*, 33 La. Ann. 1073 (1881).

[38] Dillon, *op. cit.*, sec. 237.

[39] See, for instance, *Union Ice Co. v. Ruston*, 66 So. 262, 135 La. 898 (1914) prohibiting municipalities from owning ice plants, and *Const. 1921*, art. 14, sec. 18, specifically authorizing them to do so.

[40] *State v. N. O.*, 91 So. 533, 151 La. 24 (1922). *Const. 1921*, art. 19, sec. 18, declaring the exercise of the police power of the state shall never be abridged, does not preclude the state from delegating the police power to an administrative board, municipality, or other political corporation, but merely prohibits an irrevocable surrender of the police power, and requires that the delegation of any part of it shall be subject to revocation by the legislature. In *Gas Co. v. Hart*, 4 So. 215, 40 La. Ann. 474 (1888) the supreme court declared that the police power is the right of a state, or a state functionary acting under delegated authority, to prescribe regulations for the good order, peace, protection, convenience, and comfort of the community.

[41] See, for instance, *Peart v. Meeker*, 12 So. 490, 45 La. Ann. 421 (1893).

garages and filling stations, peddlers, moving picture theatres, pool rooms, and various other activities are thus fit subjects for regulation, even to the extent of prohibiting them.

Within recent years local political subdivisions, especially municipalities, have gone into the field of public ownership of public utilities.[42] One of the most difficult problems in connection with the general subject is that of financing the activity. Two methods have been provided, one by taxation, the other by pledging the equipment, buildings, and revenues, both as bases for bond issues. If the latter method is used, however, title to the property must be vested in the corporation as such, and not in the public.[43] Where title to any property is vested in the public, nothing may operate to change its status, unless by express lawful grant.

In exercising their numerous powers it very often becomes necessary for local governments to expropriate or condemn property. Any political corporation of the state, and any corporation created for educational or charitable purposes, may expropriate property by instituting condemnation proceedings in the district court.[44] Where private property is taken it must be for a public use or purpose,[45] and it must be taken by due process of law with just compensation to the former owners.

Liability of Political Corporations

The courts of Louisiana have not been very clear, nor does it seem that they have been consistent, in their decisions concerning the liability of parishes, municipal corporations, and special districts.[46] An attempt is made here to show that there are certain general principles which the courts have followed, but exceptions seem to be more numerous than cases in which the principles have been upheld.

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[42] See Chapter on Other Local Functions and Activities.

[43] *Farmerville v. Credit Co.*, 186 So. 82, 178 La. 43 (1931).

[44] *R. S.*, sec. 1479, as amended by *Acts of La.*, 117 of 1886, 96 of 1896, 227 of 1902, 208 of 1906, 128 of 1910, 176 of 1928, and 5 of E. S. 1928.

[45] *N. O. v N. O. Co.*, 186 So. 91, 178 La. 71 (1931); *Amet v. T. & P.*, 41 So. 721, 117 La. 454 (1906); *Shreveport v. Herndon*, 186 So. 297, 178 La. 144 (1931). In expropriation proceedings juries composed of freeholders determine the value of the property according to the testimony of witnesses and their own knowledge. Where a verdict is faulty, in the face of the evidence, the court will set aside the verdict.

[46] For a more complete account of the liability of special districts see Chapter on Special Municipal Corporations.

Parishes and police juries are corporate bodies and may be tried and sued in their corporate names.[47] Citation must be served on the corporation through its president.

A parish is an involuntary corporation vested with a portion of the political powers of the state, and exercises only a quasi-legislative authority. It is not liable for damages for torts or trespasses committed on the property of individual citizens with whom it has no private relations.[48] Neither is a parish liable for damages caused by the negligence of a police jury in a matter in which it has some discretion. The parish represents the sovereign power, not the taxpayer, by whom the damages must be paid if allowed.[49]

Parishes have, however, been held liable for injury resulting from the illegal obstruction to the navigation of a river by persons for whom the police jury was responsible,[50] for the cost of paving sidewalks around the courthouse square in the parish seat,[51] in suits by employees under the Employers' Liability Act,[52] and where they have not followed certain rules and forms provided for by law in performing administrative discretionary functions.[53]

Municipalities are also subject to suit, either in their own names or through their governing officers.

Municipal corporations, it has been said, exercise two types of powers and have two types of obligations; public, and private.[54] In exercising the first type of powers they enjoy the exemption of the government from responsibility for its own acts and the acts of its officers, deriving their authority from the sovereign power.[55] In exercising the second type of powers the corporation represents the pecuniary and proprietary interests of individuals, and the rules governing the responsibility of individuals are properly

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[47] *Code of Practice*, art. 119; *Howcott v. Smart*, 54 So. 586, 128 La. 180 (1911); *Whitehall Co. v. Parish*, 54 So. 887, 127 La. 1022 (1911).

[48] *Land Co. v. Bordelon*, 27 So. 59, 52 La. Ann. 429 (1899); *DeMoss v. Police Jury*, 120 So. 137, 9 La. App. 215 (1928).

[49] *Sherman v. Parish*, 25 So. 538, 51 La. Ann. 880 (1899); *King v. Police Jury*, 12 La. Ann. 859 (1857); *Gaudet v. Lafourche*, 88 So. 653, 146 La. 868 (1920); *Harper v. Police Jury*, 2 La. App. 21 (1925).

[50] *Houston v. Police Jury*, 8 La. Ann. 566 (1848).

[51] *Franklinton v. Police Jury*, 52 So. 172, 126 La. 2 (1910).

[52] *Hicks v. Parish*, 6 La. App. 548 (1927).

[53] *De Moss v. Police Jury*, 118 So. 700, 167 La. 88 (1928).

[54] *N. O. v. Kerr*, 28 So. 884, 50 La. Ann. 418 (1898).

[55] *Stewart v. N. O.*, 9 La. Ann. 461 (1854). Compare, however, *Moore v. Shreveport*, 3 La. Ann. 645 (1848), where a municipality was held not liable in the absence of a statute to damages by a person injured by a defect in the street, and *Varnado v. Baton Rouge*, 5 La. App. 238 (1928), holding the city liable for injury caused by a protruding brick in a sidewalk, no mention being made of express statutory liability.

applicable.[56] But municipalities are also liable whenever an act authorized by them is not warranted by the powers bestowed upon them, is contrary to law, or is improperly, wantonly and maliciously done.[57] Finally, municipalities are held liable by statute for damages done to property by mobs or riotous assemblies in their respective limits.[58]

As is apparent, the courts have not been altogether consistent in their decisions, holding in the main to certain principles, but allowing the facts in each case to substantiate a change in their opinions. It is very likely that one of the reasons for this vacillation on their part is the fact that even though judgment against a political corporation is returned, it does not necessarily follow that damages will be paid. In 1869 the legislature authorized judges returning verdicts of this kind against political subdivisions of the state to order the corporation to levy a tax sufficient to pay the judgment.[59] This authority was withdrawn in 1877,[60] and the courts returned to their previous stand, that they could not compel the payment of judgments of this character against political subdivisions of the state.[61]

Both parishes and municipalities are liable for valid contracts made and executed,[62] and the constitution specifically authorizes interested persons to bring suit to enforce the collection of taxes for the payment of special obligations voted by the property owners of the subdivision.[63]

Full Corporations and Quasi-Corporations

Constitutions, statutes, and codes of Louisiana ordinarily refer to local political corporations as "parishes, municipalities, and other subdivisions of the state." In 1910, for instance, and in subsequent legislation, this phraseology is used over and over again, and in many instances these three types of political corporations are granted practically identical

[56] *Davis v. Public Belt Ry.*, 99 So. 419, 155 La. 504 (1924). A city operating a street railway is doing so for private gain and hence is liable for a street crossing killing.
[57] *McCrary v. Lafayette*, 4 La. Ann. 440 (1849); *Walling v. Shreveport*, 5 La. Ann. 660 (1850); *Wilde v. N. O.*, 12 La. Ann. 15 (1857); *Bennett v. N. O.*, 14 La. Ann. 120 (1859).
[58] *R. S.*, sec. 2458.
[59] *Acts of La.*, 69 of E. S. 1869, and *Police Jury v. Packard*, 28 La. Ann. 199 (1876).
[60] *Ibid.*, 96 of E. S. 1877. But see *Smith v. Huey*, 34 La. Ann. 1011 (1882), *Sawyer v. Concordia*, 12 F. 754, (1882), and *Levy v. Shreveport*, 28 F. 209 (1886).
[61] *Bassett v. School Directors*, 9 La. Ann. 513 (1854).
[62] *Saloy v. N. O.*, 33 La. Ann., 70 (1881); *Shreveport Co. v. Shreveport*, 47 So. 40, 122 La. 1 (1908); *Kennon v. Hilburn*, 80 So. 224, 144 La. 131 (1918).
[63] *Const. 1921*, art. 14, sec. 14, para. i and j, as amended, 1926.

powers.[64] In 1915 the state supreme court held that the term municipal corporation as used in Article 85 of the Constitution of 1898 included a police jury.[65] But that conclusion was reached with some hesitation and only by a divided court, and mainly because the connection in which the term was used in the article indicated that the intention was to designate by that term the political bodies having legislative powers. Police juries are of that character. But the context of Article 332 of the same constitution, "any parish, municipal corporation, ward, or school district," indicated on the contrary that by the term municipal corporation cities, towns, and villages solely were meant to be designated.[66]

This later view was further explained in 1923 when the same court held that "it (the police jury), or the parish which it represents, stands much lower in the scale of governmental agencies than a municipality, strictly speaking, and is often termed a quasi-corporation. The chief distinction between such public bodies and municipalities is that they are clothed with such governmental powers as they possess primarily and directly by the legislature and without the consent of the citizens or inhabitants immediately affected; while the charters of municipal corporations are granted at the instance of the people who compose them. The former are mere auxiliaries of the state."[67] The latter are local governing areas of general powers. Thus it seems that cities, towns, and villages are full municipal corporations, and that parishes and special districts may be termed quasi-municipal corporations, although the legal philosophy of Louisiana and past treatment of these political bodies indicate that there is really little actual difference between them, and that the differences found are of degree rather than of a fundamental character.

At any rate, parishes today occupy a position so closely resembling that of the municipal corporation, particularly with respect to local government powers, that there seems to be little real difference between them, and it is entirely possible that the next decade or so will see a change in the attitude of the courts on this subject.

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[64] *Acts of La.*, 256 of 1910, as amended.
[65] *State v Hagen*, 67 So. 935, 136 La. 868 (1915).
[66] *Joyce v. Police Jury*, 88 So. 587, 146 La. 822 (1919).
[67] *Union Sulphur Co. v. Parish*, 96 So. 787, 158 La. 857 (1923).

Agents of the State and Representative and Geographical Units

The parish is the main unit of administration for state purposes. As an agent of the state the parish is a unit for public education, for the conduct of elections and primaries, for the administration of justice, for the assessment and collection of state and local taxes, for activities pertaining to health, sanitation, and for the performance of other similar duties and functions. Municipalities are used as agents of the state only in a secondary sense, and special taxing areas are, in nearly all cases, portions of parishes created for certain limited purposes.

Each parish, and each ward of the City of New Orleans (Orleans Parish) has at least one representative in the state legislature.[68] There are, in all, one hundred representatives, each parish having from one to four representatives and Orleans Parish having seventeen representatives according to their respective populations. The sixty-four parishes are likewise grouped into thirty-three senatorial districts, with thirty-nine senators, each district having at least one senator. No parish, except Orleans Parish, may be divided in the formation of a senatorial district. Finally, whenever the state legislature reapportions representation in the house of representatives, it must also divide the state into new senatorial districts, thus securing a more equitable representation in both houses.

As geographical areas parishes only are of any importance. In area parishes range from one hundred ninety-six square miles for Orleans Parish to seventeen hundred fifty-six square miles for Terrebonne Parish.[69] The average area is approximately seven hundred fifty-seven square miles. There are forty parishes below this average. In population parishes vary from six thousand fifty-four in an area of fifteen hundred one square miles in Cameron Parish to four hundred fifty-eight thousand seven hundred sixty-two in an area of one hundred ninety-six square miles in Orleans Parish. The average population per parish is thirty-two thousand eight hundred thirty-seven. Fifty parishes are below this average in population. Density of populations range from four peo-

[68] *Const. 1921*, art. 8.
[69] See Appendix H.

ple to the square mile in Cameron Parish to two thousand three hundred forty to the square mile in Orleans Parish. The average population per square mile is forty-three. Assessed valuations of taxable wealth as of 1931, vary from $2,146,497 in St. Helena Parish to $610,093,510 in Orleans Parish.[70] The average assessed valuation is $26,034,867. Fifty-seven parishes are below this average.

Boundaries of parishes along the Mississippi River are largely historical and in only a few instances are they natural ones. Nearly all boundaries of the northern, western, central, southwestern, and southeastern parishes are arbitrary and of no particular significance.

The problem of areas best suited for administrative purposes for rural local government and for purposes of state administration can be solved in two ways: by city-parish consolidation, and by parish consolidation.

City-parish consolidation has been effected with respect to New Orleans and Orleans Parish. There remain only two other possibilities worthy of consideration; Baton Rouge and East Baton Rouge Parish, and Shreveport and Caddo Parish. In neither of these cases is the problem a pressing one. Duplications between city and parish activities are not many, and where there are such duplications their extent is not so great as to be very harmful. In any case, the parish dominates the municipality in most respects.

There remains only the one other solution. On the bases of population, area, property assessed for taxable purposes, contiguity of territory, transportation arteries, and industries, the following pairs of parishes can be consolidated with advantage to all concerned.

East and West Carroll Parishes, St. Helena and Livingston, Ascension and St. James, St. Charles and St. John the Baptist, West Baton Rouge and Iberville, Lafayette and St. Martin, and East and West Feliciana parishes should be consolidated as proposed. The southern portion of St. Martin Parish, detached from the parish proper, and the extreme eastern portion of Iberia Parish should be merged with Assumption Parish. There are other combinations not mentioned here that could be effected, but on the bases taken, these consolidations seem the most logical. To date, however,

[70] See Appendix D.

there seems to be little sentiment for such a movement. There is rich historical background to many of these parishes. Some of them have been one parish in the past, and have disintegrated. But the financial exigencies of the present may soon force sentiment to give way to reality.

A problem of metropolitan government exists with respect to New Orleans and adjacent territory. It is entirely possible that problems of health, sanitation, safety, and convenience will force an annexation movement leading toward the expansion of New Orleans on the western side of the Mississippi River at the expense of Jefferson and St. Bernard parishes. Under the Constitution of 1868 metropolitan government for this area for police and health was an accomplished reality. The defeat of the "carpet-baggers" in the state was followed by the dissolution of these areas. Problems of the present may compel a duplication of past solutions.

Conclusion

The present chapter has no doubt, indicated the importance of the parish in Louisiana. This does not mean, necessarily, that municipal areas are not important, that they do not have many problems that need solution, nor that they are to be ignored. It does mean, however, that local problems are still mainly rural in character, and although municipalities have a vital part to play in the future and care should be taken that they are not ignored to their own detriment, the parish is the problem of the moment, and its future welfare is the future welfare of the state.

CHAPTER VII

Parish Government

The governing authority of the parish is the police jury.[1] Because of its size and method of selection it corresponds to the county boards of supervisors found in many states. But because its members act only in parish-wide affairs and have no special individual local duties, it is also somewhat similar to county boards of commissioners in other states.

[1] *St. Louis & S. W. v. Nattin*, 277 U. S. 157 (1927).

This local board of governmental direction and performance, composed of from five to sixteen members, has powers which may be grouped into three classes. It exercises legislative, administrative, and quasi-judicial powers. The police jury acts in a legislative capacity when it enacts ordinances and regulations for the parish.[2] Originally created as an advisory body to the parish judge, the police jury is now the actual administrative authority of the parish, directing all of its activities. In reviewing the assessments and valuations of property for purposes of taxation it acts in a quasi-judicial capacity. Thus in spite of its peculiar name and history the police jury is almost a counterpart of the governing bodies of counties in other states.

Commission Government

In response to a constitutional requirement the legislature has provided two optional forms of parish government. The form originally prescribed and which is in effect in all parishes except Orleans Parish, is the police jury. The other form, commission government, may be adopted by a majority affirmative vote of those voting on the question in a parish election held for that purpose.[3]

Under this form of local government a commissioner of public affairs, a commissioner of finance, and a commissioner of public improvements would be elected at large from the parish for four year terms. This board of commissioners would exercise all the powers and perform all the duties of the former police jury and would simply supersede that body. A comparison of this Act with the Commission Charter of 1912 shows that both have much in common, and the parish commission government act may have been patterned very largely after the city commission government act.

Each of the three commissioners would act in an individual capacity, and all of them would direct the policy and general affairs of the parish at large with the commissioner of public affairs as the presiding officer. Their salaries would be based upon the assessed valuation of the taxable property of the parish and would range from twelve hundred to thirty-six hundred dollars per year. It is assumed that

[2] *Hunsicher v. Briscoe*, 12 La. Ann. 169 (1857). This is not, however, a delegation of legislative power.
[3] *Const. 1921*, art. 14, sec. 8, and *Acts of La.*, 190 of 1914.

they would be full time officials, whereas police jurors are only part time officials on a per diem basis. Commissioners would be subject to recall. Provision for the initiative and referendum in respect to parish ordinances was also made.

No parish has, to date, adopted commission government. Two reasons may, perhaps, be advanced for this lack of interest. In the first place, the police jury is an historical institution and there is a large degree of sentiment for its retention. Secondly, a very large number of rural inhabitants believe that sections should be represented on the local governing body so that the larger more populous areas of the parish may not dominate its affairs. Regardless of the merits of these two arguments, rural areas of parishes are today faced with the necessity of adding to their local sources of revenues, and this can only come by forcing the wealthier sections to bear the added cost. As long as parishes are organized on this sectional basis little or nothing can be accomplished in that direction.

The Police Jury, Selection and Qualifications

Police jurors are elected for four year terms at each general state election, and hold office until their successors are elected and have qualified.[4] Any vacancies caused by death, resignation, removal of residence from the parish or ward, or by failing to qualify, are filled by appointment by the governor.[5] Each parish is divided by the police jury into from five to ten police jury wards, and these wards are numbered from one to ten. When once established they may not be changed except by the recorded vote of two-thirds of the members elected.[6] Each ward of the parish is entitled to at least one police juror, and additional jurors are provided for on population bases.[7] In parishes with populations of fifty thousand or more inhabitants, Orleans Parish excepted, there is one police juror for each ward and an additional juror for each ten thousand inhabitants, and one juror for each additional ten thousand or part in excess of seven thousand five hundred. In parishes with less than fifty thousand

[4] *Acts of La.*, 161 of 1894 and 57 of E. S. 1877; *State v. Montgomery*, 25 La. Ann. 188 (1874).
[5] *Ibid.*, 286 of 1916.
[6] *Ibid.*, 57 of E. S. 1877.
[7] *Acts of La.*, 94 of 1884, 196 of 1906, and 279 of 1908. Also see *Ibid.*, 57 of E. S. 1877; *Thomas v. Doughty*, 111 So. 681, 163 La. 213 (1927), and *Thomas v. Fuller*, 118 So. 42, 166 La. 847 (1928).

inhabitants, in addition to one juror from each ward there is one juror for each additional five thousand inhabitants, and one additional juror for each additional five thousand or part in excess of two thousand five hundred. These additional police jurors are appointed by the governor and confirmed by the senate when a census shows that they are necessary.[8] They remain in office until their successors are elected and qualified.

During the third special session of the legislature in 1934 a rather interesting law was passed authorizing the governor to appoint, with the consent of the senate, as many police jurors for East Baton Rouge Parish as there are elected ones, the idea seeming to be that in this way the interests of the state could be properly safeguarded in the parish in which the state capitol is located.

Police jurors must be residents of the wards from which they are elected.[9] They must also be qualified electors, citizens of the state for five years prior to election, able to read and write English, and they must own—or their wives must own—property in the parish in which they are elected, assessed for at least two hundred and fifty dollars. A police juror may be recalled at a special election held in the ward for that purpose, if a majority of the qualified voters participating in the election favor his recall.[10]

Legal Status

The police jury derives its powers from the constitution and from the legislature, as do the governing authorities of all other political subdivisions of the state.

> "Police juries have both legislative and executive functions and are vested with large discretion in their fields of action, and it is only when they commit abuse fraught with injustice and injury to their principals that the judiciary will extend protection and check such abuse."[11]

A police jury is a political corporation and it may sue and be sued.[12] It can only exercise such powers as have been

[8] *But see Ibid.*, 94 and 161 of 1926, and 42 of 1928 creating additional police jurors for wards in La Salle and Pointe Coupeé parishes.
[9] *R. S.*, sec. 2727 and *Acts of La.*, 94 of 1894.
[10] See *Acts of La.*, 121 of E. S. 1921.
[11] *Cruse v. Police Jury*, 92 So. 679, 151 La. 1056 (1922).
[12] *Parish v. Police Jury*, 88 So. 250, 145 La., 1058 (1919).

granted by express terms, or such as are implied from or incidental to powers expressly granted.[13] It is primarily the judge of its powers and duties under the law, however, and no person or officer is competent to question or reverse its determination except by an appeal in proper form to the judicial power. Until reversed by such authority, its determination is final.[14]

Organization

Police juries set the dates and time of their regular meetings and may provide for special meetings. The latter must be called when requested by twelve freeholding residents, and notice must be given.[15] They provide their own compensation, which may not exceed five dollars per day and five cents per mile for going to and returning from the parish seat, while actually engaged in the service of the parish. They may make but one charge for mileage for each session of the jury, and no member may be paid for more than thirty days service each year.[16] Police jurors are prohibited from being interested in parish contracts or public works under the supervision and direction of police juries.[17]

Each police jury elects a president from its own membership and, when he is absent or unable to act, an acting president is selected to act in his stead. The president may resign at any time, either as president or as a member, to the police jury.[18]

Certain special duties have been assigned to police jury presidents.[19] Unless otherwise provided they perform the same duties as did parish judges while Louisiana was governed as a territory. They approve bonds of parish officials, preside at police jury meetings, decide questions of procedure, and sign all warrants and make all contracts with the advice and consent of the police juries. They are required to report to the governor each year defaulters on public funds entrusted to them and the amount of defalcation. Each year they must submit to the state auditor a list of the

[13] *State v. Miller*, 41 La. Ann. 58 (1899); *Sterling v. Parish*, 26 La. Ann. 59 (1874).
[14] *State v. Judge*, 43 La. Ann. 125 (1891).
[15] *R. S.*, secs. 2781-84; *Dupuy v. Police Jury*, 89 So. 627, 115 La. 579 (1905).
[16] *Acts of La.*, 57 of E. S. 1877, 40 of 1900, 102 of 1904, 275 of 1914, and 52 of 1920.
[17] *Ibid.*, 22 of 1898 and 16 of 1920; *Hankins v. Police Jury*, 95 So. 102, 152 La. 1006 (1922).
[18] *R. S.*, secs. 2739-2745.
[19] *Acts of La.*, 57 of E. S. 1877, 52 of 1880 and 40 of 1896.

names and businesses of persons paying parish license taxes. A complete statement of the financial condition of each parish is also submitted to the state auditor annually. If any police jury president fails to perform any of the duties imposed upon him by law he forfeits twenty-five dollars for each offense unless excused by the police jury.

After each general state election the newly-elected police juries of the various parishes form themselves into a number of committees to better facilitate the consideration of various phases of their work, and also to aid in the more specific administrative duties they perform.[20] The most important are probably the finance committee, the committee on roads and bridges, the committee on stock laws, the committee on public works, and the committee on health regulations. Each committee has a major function to supervise and control, reports to the whole jury at stated intervals, and suggests or recommends changes or improvements. The committees perform their duties through the parish officers selected for these particular activities.

All police jury meetings are ordinarily open to the public, but when questions of extreme importance arise the jury may resolve itself into an executive session and the public is then excluded. The usual parliamentary rules of procedure apply at all meetings unless they are changed by the jury or by the legislature.

Powers and Duties

Police juries may make all regulations and ordinances necessary:[21] for their own government; for directing, making, and repairing roads, bridges, causeways, dykes, and levees within their parish limits;[22] for cleaning the banks of rivers and natural drains; concerning enclosures or fences;[23] as to cattle;[24] for the police of taverns and houses of public entertainment;[25] concerning fines against violators of parish ordinances—which may not exceed one hundred dollars in amount, or, in case of imprisonment, the punishment may

[20] See *Minute Books* of police juries.
[21] *R. S.*, sec. 2743; *Acts of La.*, 115 of 1898, 202 of 1902, 182 of 1906, and 284 of 1928.
[22] *Acts of La.*, 84 of 1884 and 67 of 1888.
[23] *Miller v. Boop*, 67 So. 831, 136 La. 788 (1915).
[24] *State v. Overby*, 76 So. 220, 142 La. 21 (1917); *Boykin v. Police Jury*, 126 So. 511, 169 La. 1014 (1930).
[25] *Acts of La.*, 68 of 1928.

not exceed thirty days;[26] for levying taxes necessary to defray parish expenses;[27] for establishing and regulating ferries and toll bridges within their parish limits; for the appointment and removal of parish treasurers and of all other necessary officers;[28] for the support of the poor and needy by taxation or other means; for opening natural drains which may have become obstructed and constructing drainage ditches;[29] for preventing trespasses on private property; for regulating all toll rates in their parishes not otherwise provided for; for preventing the introduction of contagious or communicable diseases, not inconsistent with the laws and constitutions of the state and of the United States; to sue any person for whose account roads, levees, or other public works have been made or repaired at the expense of the parish; for appointing overseers or supervisors of roads and levees; to exercise a general supervision over all parish subdivisions of their own creation; to lay out streets, alleys, subways, viaducts, parks, boulevards, playgrounds, community centers, public buildings, and public improvements; to plat land into lots, roads, and streets; and to locate, route, or develop transportation lines necessary to the systematic planning of the parish.

These general powers have been exercised by police juries almost from their very creation, and have been amplified or extended from time to time. In addition to these general authorizations police juries have been granted other specific powers and duties of which the following are perhaps the most important.

Any property owned by a police jury, or by the parish, may be sold to or exchanged with other political corporations when no longer needed for public purposes.[30] Police juries may also expropriate land for their own use or for donation.[31]

Police juries may grant franchises over parish roads outside of the limits of incorporated villages, towns, or cities, for the construction and operation of electric power, heat, or light transmission; for pipe lines or mains for supplying

[26] *State v. Westmoreland*, 68 So. 502, 138 La. 1015 (1918).
[27] *Talbot v. Parish*, 24 La. Ann. 185 (1872); *Parish v. Chiapella*, 30 La. Ann. 1148 (1878).
[28] *Richard v. Rousseau*, 35 La. Ann. 988 (1883); *Ehret v. Police Jury*, 67 So. 176, 136 La. 391 (1915); *Jumonville v. Police Jury*, 4 La. App. 580 (1926).
[29] *Avery v. Police Jury*, 12 La. Ann. 554 (1857).
[30] *Acts of La.*, 250 of 1926. Also see *Const. 1921*, art. 4, sec. 6.
[31] *R. S.*, sec. 1479. Also see *Acts of La.*, 128 of 1910.

water or gas; and they may prescribe regulations as conditions for granting such franchises.[32]

The consolidation of the offices of parish treasurer and clerk of the police jury may be effected.[33] They may retain special counsel in particular cases and pay a reasonable compensation for that service; but the district attorney is ex officio attorney for each parish within his district and acts in that capacity without additional compensation.[34]

Gambling may be suppressed and peddling regulated by parish ordinances.[35] The police juries must provide public buildings for offices, courthouses, jails, and their equipment.[36] Contracts for more than five hundred dollars must be advertised for and let to the lowest responsible bidder,[37] and no contracts may be let on a cost-plus basis. Police juries may protect and conserve wild animal life and the natural resources of the state by means of appropriate action.[38] The fiscal agents or depositories of parishes are selected by their police juries.[39] Parishes are authorized to advertise by publication and by radio.[40] Police juries are required to select each year a parish printer. The newspaper selected is then known as the official journal of the parish, and must print all notices, statements, and proceedings required to be printed.[41]

The Police Jury Association of Louisiana

On April 29, 1924, at a meeting held in Baton Rouge, The Police Jury Association of Louisiana was formed for the purpose of concentrating the ideas, the interest, and the needs of all the people of the state, and for making possible an open forum where such subjects can be introduced and discussed. The Association also acts as a general clearing house for information of importance to police juries and to their parishes. Meetings are held each year and the current issues or problems of local and state-wide significance are

[32] *Acts of La.*, 127 of 1924.
[33] *Ibid.*, 122 of 1924. In East Baton Rouge Parish, however, this consolidation has not been effected since the clerk acts as parish auditor.
[34] *Ibid.*, 125 of 1912. Also see cases cited under Note 27.
[35] *Ibid.*, 188 of 1918, and 112 of 1932.
[36] *Ibid.*, 27 of 1910. Also see *R. S.*, sec. 2746 and *Henderson v. Shreveport*, 107 So. 139, 160 La. 860 (1926).
[37] *Ibid.*, 78 of 1926; *Standard Highway Co. v. Police Jury*, 103 So. 819, 158 La. 294 (1925).
[38] See Chapter on Other Local Functions and Activities.
[39] *Acts of La.*, 45 of 1932.
[40] *Ibid.*, 8 of E. S. 1926.
[41] *Ibid.*, 184 of 1920.

considered. Any police juror may become a member by paying a small fee.[42]

Conclusion

All of the general and a large number of the specific powers of police juries have been described herein. Other specific powers and functions have been described in the chapters dealing with particular functions and activities.

The present organization of parochial governing bodies is a product of the past. Created primarily as advisory bodies to parish judges, who were originally the administrative authorities of the parishes, their powers and duties have been constantly added to and enlarged. The police jury of today is too large and unwieldy for the performance of its most important function, the administration of parish affairs. As a quasi-legislative or quasi-judicial body, it is competent to act in the limited jurisdiction assigned, but its organization and structure prohibit it from securing good results as an administrative body.

Police juries have sought to remedy this fault by assigning particular groups of members to the task of supervising or performing certain definite functions. For the most part these committees have followed, perhaps unconsciously, the procedure of the English county council, by acting through specialized employees such as the parish engineer, the parish veterinarian, the parish physician, the parish treasurer, and other officers. The task of centralizing this authority seems, then, a relatively simple one. As has been shown before, all powers relating to the parish have been delegated to the police juries. Police juries have also been authorized to appoint and remove all necessary parish officers. Thus there seems to be no prohibition on the police jury to adopt the county manager plan of government with the parish engineer as the parish manager. All parish activities could then be reorganized on a departmental basis with the manager in full charge and responsible to the police jury. The latter body would then act in its proper sphere, as the policy determining and directing authority of the parish.[43]

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[42] See *Louisiana Digest*, New Orleans, the official journal.

[43] For county manager government see Fairlie and Kneier, *op. cit.*, p. 119. Also see Kneier, C. M., "The County Manager Plan," and Wager, P. W., "The Case for the County Manager Plan," *Public Management*, Vol. XII, pp. 45 and 78 (1930).

Louisiana still depends very largely on the parish for purposes of local government. In 1930 the rural population of the state numbered 1,268,061 as against an urban population of only 833,532.[44] On the other hand, valuations of taxable property are constantly decreasing and the populations of nineteen of the sixty-four parishes are also decreasing.[45] Something must be done, then, to lower the costs of local government by abolishing unnecessary or overlapping offices and by centralizing and unifying the whole governmental machinery of the parish. This will not, of course, solve the whole problem of governmental costs, but it will aid in their reduction. A redistribution of some of the parish functions, either to larger areas, or to the state is also necessary. In some instances parish consolidations could be affected with advantages to the parishes consolidated. The culmination of these three movements should result in greater service to rural areas with a corresponding reduction of local costs.

CHAPTER VIII

Municipal Government

Until about 1896 the legislature of Louisiana provided for municipal forms of government by special charter, each municipality receiving the special consideration that the legislative body deemed necessary. There were no constitutional limitations restricting legislative action of this character. The number of municipal areas with populations of five thousand or more was very small, and municipal needs were simple.

In 1896, however, it is evident that the legislature began to see the danger of the special charter system, for it provided an optional form of mayor and council government for cities, towns, and villages of the state. This was entirely voluntary on the part of the legislature. No change was made in the powers of municipalities created in the past, nor were future municipalities restricted very much by the new general charter law. Subsequent municipal governmental changes have been largely based upon this general act.

[44] *U. S. C. R.*, 1930, Population, Vol. III, part I, p. 965.
[45] See Appendices D, G and H.

Whether suspicious or not of legislative meddling in the affairs of towns and villages, the conventions framing the constitutions of 1898, 1913, and 1921 provided a limitation on the legislature, prohibiting it from enacting special legislation with respect to either charters or forms of government of municipalities with populations of less than two thousand five hundred inhabitants.[1] All municipalities with populations larger than this minimum are still subject to special legislative action. In this connection it is well to point out that municipal charters are not contracts within the sense of constitutional provisions prohibiting the impairment of contracts. The legislature retains full authority to amend municipal charters, and to enlarge or diminish the powers granted by it.[2]

Mayor and Aldermen Government

In 1896, as noted above, the legislature provided a form of mayor aldermen government for all municipalities, great and small, that desired to come under this new general law. But a new constitution was framed the next year and adopted in 1898. The legislature thereupon drew up a new general law in 1898 including the most desirable features of the older law and making several new additions. The municipalities that had adopted the older law were not disturbed. On the contrary, they were allowed to make other and additional changes in their charters.

Classification of Municipalities

For the purposes of this law, all municipalities in the state were classified according to their populations.[3] All those containing five thousand or more inhabitants are termed cities. All those containing from one thousand to five thousand are termed towns. Those having less than one thousand inhabitants but more than one hundred and fifty are villages.[4]

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[1] *Const. 1921*, art. 4, sec. 4; *State v Capdevielle*, 29 So. 215, 104 La. 561 (1900); *Mulhaupt v. Shreveport*, 52 So. 1023, 126 La. 780 (1911); *Swords v. Bailto*, 29 So. 942, 105 La. 328 (1901).

[2] *Moore v. N. O.*, 32 La. Ann. 726 (1880); *Insurance Co. v. Patton*, 32 La. Ann. 1306 (1880).

[3] *Acts of La.*, 136 of 1898, as amended by *Ibid.*, 97 of 1900, 17 and 59 of 1902, 196 of 1904, 136 of 1906, 280 and 306 of 1908, 111 of 1912, 85 and 181 of 1914, 114 and 185 of 1916, 189 and 196 of 1920, 89 of E. S. 1921, 281 of 1924, 69 and 70 and 75 of 1926, 22 and 289 of 1928, 8 of E. S. 1929, and 214 of 1932.

[4] *Judice v. Scott Village*, 121 So. 592, 168 La. 111 (1929).

No municipal corporation may be created with less than one hundred and fifty inhabitants.

Whenever the population of a municipality has increased or diminished to the extent that it is no longer in its proper class, the governing authorities are required to certify that fact to the governor, sworn to by the census taker. If the governor finds that the municipality is in the wrong class he issues a proclamation correctly classifying it and sends a copy to the mayor.[5] This authority of the governor is confined to classifying the municipality as a city, town, or village.[6] If he thinks the census is fraudulent, the governor is not bound by the statement submitted to him, and he may investigate the facts of the case himself.

If a census shows that a municipality created under this act has fewer than one hundred inhabitants the governor abolishes the corporation by proclamation, the municipality ceases to exist, and is prohibited from further exercising any corporate power or function. A dissolution of this character does not, however, relieve the municipality of any debts it may have incurred.

The Incorporation of Municipalities

When two-thirds of the qualified voters of a hamlet or unincorporated village petition the governor for incorporation, and include in the petition the boundaries of the proposed area and the number of residents, if the petition is satisfactory and the facts contained in it are correct, the governor by proclamation declares the village incorporated, outlines its boundaries, and states its name.[7] In this connection the governor's acts are ministerial and are not of a legislative character.[8] The officers of a newly created municipal corporation are appointed by the governor and serve until their successors are elected and have qualified for office.

Wards

All cities, under this law, must be divided into four wards as nearly equal in population as is possible and of contiguous

[5] *State v. Ehret*, 65 So. 871, 135 La. 643 (1914).
[6] *McFarlain v. Jennings*, 31 So. 62, 106 La. 541 (1901).
[7] *See Report of Secretary of State*, 1931, p. 56, for new charters, changes in classification, and charter changes for 1930.
[8] *State v. Aicklen*, 119 So. 425, 167 La. 456 (1929).

territory, but in case the city is not divided into wards before the first election the aldermen may be elected from the city at large. The boundaries of wards may be changed by ordinance by a two-thirds vote of the elected aldermen, and when once fixed may not be changed again for two years, except to unite territory added to the city. No change in ward lines may be made within one year of a municipal election.

Towns may or may not be divided into wards, as decided by the mayor and aldermen. Once divided, though, they are subject to the same limitations as are cities. When not divided the whole town is treated as a single ward. Villages may not be divided into wards under any circumstances.

Officers

Municipal officers of the mayor aldermen form of government consist of the mayor, the aldermen, a marshal, a tax collector, an assessor, a clerk, and a street commissioner. The mayor may be the street commissioner if the aldermen so decide, and either the clerk or marshal may be the tax collector or the assessor as decided by the aldermen. On the other hand, the street commissioner and the clerk may both be aldermen. All vacancies in office are filled by appointment by the governor for their unexpired terms.

The mayor is elected for four years from the municipality at large, and must be a qualified voter and a resident for two years. He presides at all meetings of the board of aldermen and votes only to break a tie. He exercises the veto power subject to a two-thirds affirmative vote. He signs all commissions, appointments, and warrants drawn on the treasury for money. Reports may be required of all municipal officers by the mayor, and exhibitions of their financial accounts. He may vacate and annul penalties, and remit fines and forfeitures for the violation of municipal ordinances, subject to the consent of the aldermen. From time to time he may communicate information and recommendations to the board of aldermen. In general, he superintends and controls the affairs and officers of the municipality. All mayors may act as committing magistrates.

The number of aldermen in a city varies from not more than nine to not less than five, and they are elected for four year terms. Where there are nine aldermen, two are elected

from each ward, the other at large. In all other cases an equal number of aldermen are elected from each ward, and if there be an odd one he is elected at large. Towns have five aldermen each, villages three. Their qualifications for office are the same as those of the mayor, and they must be residents of their wards.

No alderman may hold any other office or employment under the municipality other than the exceptions enumerated above. Neither may any alderman or municipal employee be directly or indirectly interested in any work, business, or contract to be paid for from the municipal treasury.

At the first regular meeting of newly elected aldermen the officers of the municipality are selected, except the marshal, their salaries or compensations are provided,[9] and the bonds of the clerk and collector are set by the board for a two year term each.

The mayor and board of aldermen are required to hold at least one regular meeting each month as fixed by ordinance, but special meetings may be called by written notice on the part of the mayor or any alderman for important business. When there is less than a quorum present, the meeting may be adjourned to a later date. Aldermen may not receive pay for more than one regular and one special meeting each month.

All ordinances must be read and considered by sections at public mayor and aldermen meetings. They are voted upon by yeas and nays and the votes are recorded by the clerk. All ordinances are also recorded by the clerk. The printing and revision of municipal ordinances, and their codification in municipalities having city courts, are encouraged.[10] All newly enacted ordinances may contain only one subject each, clearly indicated in their titles, and must be published in a local newspaper or be posted in a public place.

The clerk, who also acts as auditor, and sometimes as assessor, keeps all the official records of the municipality including the minutes of the board of aldermen, a record of claims against the municipality, and a record of all sales for taxes. Each year he, or the tax collector, makes up

[9] *Crawford v Kentwood*, 6 La. App. 572 (1927); *Whitington v. Glenmora*, 1 La. App. 568 (1925).

[10] *Acts of La.*, 136 of 1898 and 16 of 1926.

the municipal assessment roll by copying the property valuations of local residents from the parish rolls.

The tax collector may or may not be the assessor. If he is, he has charge of making up the assessment rolls. He also sees to the collection of all municipal taxes at the same time that state and parish taxes are collected and under the same penalties. Tax sales are made by the collector in the name of the municipality for the non-payment of taxes.

Each year the board of aldermen may employ an attorney.[11] He is not a municipal employee. He represents the municipality in suits, and acts in an advisory capacity. Where municipal courts are established his salary is paid one-half by the municipality and one-half by the parish.

The marshal is popularly elected for a four year term and is ex officio the municipal constable and chief of police. In many villages and in the smaller towns the marshal is sometimes tax collector and assessor. As a peace officer he sees to the enforcement of municipal ordinances, and as a court officer he serves the city court, the mayor's court, or the justice of the peace court of that ward.

The treasurer receives, has the custody of, and disburses all funds belonging to the municipality. He keeps separate accounts of all receipts and disbursements and reports each month to the mayor and aldermen on the financial condition of the municipality. Money may be paid out of the local treasury only on warrants issued by the mayor and aldermen.

Under the supervision of the mayor and aldermen the street commissioner has charge of maintaining, repairing, and paving or surfacing all streets, avenues, alleys, and sidewalks.

Municipal Powers

All municipal powers are exercised by the mayor and the board of aldermen. Municipal powers under this general act consist of five general groups.

The first group includes all powers that municipalities may have had under their old special charters and which were retained by them when they adopted the general charter form of municipal government.[12]

[11] *Thalheim v. Gretna*, 186 So. 184, 17 La. App. 657, (1931).

[12] They may be examined by referring to Dart, *op. cit.*, Vol. II, title of Municipal Corporations.

The second group consists of powers which any municipal corporation usually has, such as, to sue and be sued; to acquire, own, and dispose of property; to make contracts; and to purchase or erect, and own and operate public utilities, but not to engage in a general utility business.[13]

The third group consists of detailed powers of a more specific character. They include the power of taxation for municipal purposes, to provide health regulations, to regulate public places, to grant franchises to utilities,[14] to prescribe weights and measures, to regulate markets and meat shops and collect licenses,[15] to maintain streets and roads, to preserve peace and good order in the community,[16] to provide for the election of municipal officers other than those provided by the general act, to remove and discharge officers and employees for neglect of duty,[17] to select an acting mayor when the mayor is absent or incapacitated, to exercise the power of eminent domain for public works, to appropriate money and provide for current expenses, to regulate and tax certain businesses and occupations, to provide necessary municipal buildings and public works, to levy and collect special assessments and taxes for the retirement of bonds and debts, and to pass and enforce all ordinances by providing for fines of not more than one hundred dollars or imprisonment for not more than thirty days or both.

The fourth group consists of powers that may be exercised only by the governing authorities of cities and towns. They include the regulation of charges for transporting persons and property; the provision of hospitals and houses of correction; the provision of street lighting, parks, and libraries; and the authority to provide fire departments, and to create fire limits and regulations.

The fifth group of powers is granted only to municipalities having more than one thousand inhabitants and to incorporated parish seats. These powers include authority to regulate trades and occupations, and to levy occupational taxes;[18] to regulate railroad and street railway crossings;

[13] *Gas Co. v. Ruston*, 141 So. 86, 174 La. 485 (1932); *Arnold v. Jones*, 42 So. 727, 118 La. 148 (1907).
[14] *Gas Co. v. Hale*, 125 So. 180, 169 La. 800 (1929).
[15] *Baton Rouge v. Sanchez*, 108 So. 552, 161 La. 820 (1926); *Oubre v. Donaldsonville*, 120 So. 80, 167 La. 625 (1929).
[16] *State v. Gossens*, 54 So. 795, 128 La. 270 (1911); *Ponchatoula v. Bates*, 188 So. 851, 173 La. 824 (1931).
[17] *Peters v. Bell*, 26 So. 442, 51 La. Ann. 1621 (1898).
[18] *Houma v. Houma Co.*, 46 So. 42, 121 La. 21 (1908).

to prevent animals from running at large; and to condemn property outside the municipality for certain specific purposes.

The Effect of Act 136 of 1898 on Existing Municipalities

This general law was also optional in its effect upon existing municipal corporations, but specifically excepted New Orleans because of its peculiar problems.

In order for municipalities to reap the benefits of the new general law a petition to come in under the act was required by twenty-five free holding qualified voters of each corporation, this action to be ratified by a majority of the municipal voters voting in a special election held for that purpose.[19]

Even greater freedom than this was allowed, however. Municipalities under other charters or under the Act of 1896, not desiring to adopt the new general law but wishing to change their charters so as to benefit from some of its provisions, are permitted to do so under certain conditions. The mayor and board of aldermen are required to prepare the desired amendments and submit them to the governor after publication. The governor then asks for the opinion of the attorney-general on the legal phases of the proposed changes, and if proper the governor then approves the proposed changes.[20] If after publication, however, one-tenth of the qualified voters of the municipality protest the proposed amendments, the governor is prohibited from approving them until they have been ratified by a majority of the qualified voters of the corporation at a special election held for that purpose. After being approved by the governor all charter amendments are recorded with the secretary of state at municipal expense, and also with the governing authorities of the municipalities concerned.

Commission Government

In 1910, realizing the growing interest in and demand for the commission form of municipal government, the legislature provided an optional general charter incorporating the general features of the commission plan then found in prac-

[19] *New Iberia v Meeks*, 29 So. 252, 104 La. 498 (1900); *Roth v. Thibodaux*, 68 So. 412, 137 La. 210 (1915); *Lake Charles v. Roy*, 40 So. 862, 115 La. 939 (1906).

[20] *Lake Charles v. Roy*, *supra.*, and *Wachsen v. Council*, 111 So. 177, 162 La. 828 (1927).

tice.[21] In 1912, however, the legislature wished to make a number of what it considered desirable changes and yet it did not wish to disturb municipalities that had already adopted the Charter of 1910. It therefore enacted a new general commission government law, also optional in its effect, prohibiting future adoptions of the Charter of 1910, but consenting to its continuance by cities already under its provisions. In effect, then, there are two commission systems in existence, but they are so similar in general form and content that only the Charter of 1912, which is the one in general use, will be described.

The Classification of Municipalities and Adoption of the Commission Charter

For the purposes of this form of government the legislature has accepted its previous classification of municipalities but has also created another class.[22] Cities of from five thousand inhabitants to forty thousand, known as cities of the second class; cities of forty thousand inhabitants or over, known as cities of the first class; and towns of two thousand five hundred inhabitants or more, also known as cities of the second class, are permitted to adopt this form of government. New Orleans was excepted from the provisions of this act.

Upon a petition by thirty-three per cent of the qualified voters of a municipality, the mayor is required to submit the question of adopting the commission form of government at a special election. A majority of the votes cast determines the question. If the plan is not adopted at the election at least two years must elapse before its resubmission.

Return to Original Charters

Upon a petition by thirty-three per cent of the qualified municipal voters, the mayor is required to submit the question of returning to the original municipal charter at a spe-

[21] See *Acts of La.*, 802 of 1910, as amended by *Ibid.*, 100 of 1918, 155 and 170 of 1926, and 156 of 1932.

[22] For all provisions concerning commission government see *Acts of La.*, 207 of 1912 as amended by *Ibid.*, 208 of 1914, 6 of 1916, 78 of E. S. 1921, 29 of 1922, and 24 of 1926. But see *Ibid.*, 18 of E. S. (3rd) 1934, purporting to provide an optional form of commission government, but in reality affecting the cities of Baton Rouge and Alexandria only. In Baton Rouge the Commissionership of Parks and Streets is abolished and a Commissioner of Coordination provided, appointed now but to be elected later. In Alexandria, the existing commissioners hold office temporarily.

cial election. A majority vote in the election determines the issue.

The Commission Council

In cities of the first class, a mayor and four commission councilmen are elected to office for four years. In cities of the second class a mayor and two commission councilmen are elected for four years to specific positions.

In cities of the first class the mayor is commissioner of public affairs and public education. The other offices are the commissioner of accounts and finance, the commissioner of public health and safety, the commissioner of public utilities, and the commissioner of streets and parks.

Cities of the second class each have a commissioner of public health and safety, who is the mayor, a commissioner of finance and utilities, and a commissioner of public parks and streets.

Where vacancies in office of less than one year of the unexpired term occur, the commission councils of first class cities appoint to the office, and the mayors of second class cities appoint to and fill the vacancies.

In all towns under this charter the mayor receives not more than fifteen hundred dollars per year, and the salaries of commission councilmen may not exceed five hundred dollars per year. A graduated salary scale based on population and the duties of commissioners in office has been adopted for all cities. Salaries for mayors range from two thousand five hundred dollars per year to seven thousand five hundred dollars. Salaries for commissioners range from fifteen hundred to six thousand dollars. Additional sums of from five hundred to one thousand dollars yearly are provided where cities own and operate street railways, waterworks systems, and light plants.

A quorum in city commission councils under the five commissioner plan consists of three members and the same number of affirmative votes are required to pass upon measures. Under the three commissioner plan a quorum consists of two members and the same number of votes are required to pass upon measures.

At least one council meeting must be held each month. Special meetings may be called by the mayor or by two commissioners. The mayor presides at all meetings. The com-

missioner of finance is the vice-president. During any meeting at which any person not a city officer may appear, the public must also be admitted. The mayor acts in a supervisory capacity with respect to all departments of the municipality, and makes reports and recommendations to the council for their consideration. The commission council of each municipality under this act has full power to determine the authority and duties of each department, and in whom they are to be vested.

Ordinances and Resolutions

All ordinances and resolutions having to do with appropriations, street or sewer improvements, contracts, franchises, highways, bridges, or public places, must be complete and ready for passage, be kept on file for public inspection, and be published in the official journal, for at least one week before passage. All of these matters must be by ordinance.

All other city ordinances remain ineffective for ten days after passage and publication. A two-thirds vote for emergency measures can overcome this ten day period. If, during the ten days provided, a petition by twenty-five per cent of the total number of voters voting for mayor in the last election protests an ordinance, the council is required to reconsider it, and if not entirely repealed it is suspended and voted on at the next general election or at a special election called for that purpose. A majority vote in the election is required to affirm the ordinance.

A petition signed by thirty-three per cent of the number of voters taking part in the last election for mayor may propose an ordinance. If not passed by the council it must be submitted at a special election and a majority of the votes cast confirms or defeats it. The repeal of an ordinance already in force may be brought about in the same manner.

Officers and Employees

At the first meeting of the commission council it selects by majority vote a city attorney, a secretary-treasurer and tax collector, a chief of police, an auditor, a civil engineer, a city physician, and all other necessary officers and employees. In cities of the second class only those officers listed

above that are absolutely necessary are to be selected.[23] Any officer or employee may be removed at any time by a majority vote of the council members.[24]

Commission councils, regardless of class, are authorized to determine the duties and powers of city employees and to assign them to a particular department or to departments. They have full power in formulating rules and regulations for the proper and economical conduct of the business of the municipality.

No municipal officer or employee may be financially interested, directly or indirectly, in any municipal contract or public work. Members of the commission council are also required to refrain from voting on any contract or proposed public work where they have any pecuniary interest.

Municipal Powers

One of the most interesting features of the so-called optional-general municipal charter system of Louisiana is the inclusion in all such charters of a provision to the effect that all powers granted under the older special charters, and not inconsistent with the new charter, are to be retained by the municipalities adopting the new general law. This makes it especially difficult for the student to determine in an exact way the powers of a given class of municipalities. For this reason the writer is not attempting to describe these powers, and it may be considered sufficient to state that they are in nearly all cases of a similar character to the municipal powers contained in the charter of 1898.[25]

Commission Manager Government

In 1918 when the city manager plan of government was receiving considerable publicity throughout the United States, and mindful of its duty to provide what it thought the citizens of Louisiana desired, the legislature enacted an optional commission manager plan of municipal government. Strange to say, it has not been adopted by a single municipality. The writer can only advance two possible reasons for this situa-

[23] In Baton Rouge, for instance, the clerk of the commission council is city auditor, and the commissioner of finance is also city treasurer and tax collector.

[24] *Kirkpatrick v. Monroe*, 102 So. 822, 157 La. 645 (1925); *Keefe v. Monroe*, 120 So. 102, 9 La. App. 945 (1927).

[25] See, for instance, the charters of Baton Rouge and other municipalities in Dart, *op. cit.*, Vol. II, and *Powell v. Hart*, 61 So. 283, 132 La. 287 (1913).

tion, one from the point of view of the political leader, and the other from the point of view of the layman.

The professional local office-holder would, of course, oppose such a plan because of its central theme, taking municipal government out of politics and hence restricting his patronage. On the other hand, the layman has possibly argued that the small council provided is not representative, and that the whole governmental machinery would be too far removed from the control of the voter, a philosophy that seems to permeate the whole governmental system of the state.

Any municipality, New Orleans excepted, with a population of five thousand or more may adopt commission manager government. A petition to this effect by thirty-three per cent of the number of voters in the last election for mayor must be submitted. A special election must be called by the mayor to determine the adoption of the plan by a majority of those voting.[26] If the first election fails in the adoption the question may not be resubmitted for two years.

A council of five commissioners elected from the city at large for four years is vested with the legislative and policy determining authority of the city. Their salaries are to be five hundred dollars per year. The council is to select the mayor, and an extra compensation of fifty dollars per year is provided for that official. The commissioners are authorized to select a city manager to serve at their pleasure, who may or may not be a local resident. The salary of the manager is to be determined by the council. The council is also authorized to select the city attorney and the auditor.

The ordinance power of the council is limited by the popular initiative, initiated by ten per cent of the qualified city voters, and the referendum, begun by twenty-five per cent of the qualified city voters.

All executive and administrative powers are entrusted to the manager. The charter provides for a city engineer, a chief of police, a superintendent of utilities, a probation officer, a fire chief, a city accountant, and a city treasurer, all of whom are to be appointed by and responsible to the manager. Each of these officers heads his own department. Provision is made for a civil service system with all subordinate

[26] See *Acts of La.*, 160 of 1918 for commission manager government.

employees subject to its regulations. The manager is subject to recall.

The chief criticisms of this plan lie in the field of theory, for its practical effects have never been tested. To begin with, the manager does not have the authority he appears to have. He may not remove the city attorney, the chief of police, nor the fire chief. In the second place, as are all municipal officers in Louisiana, he is subject to being recalled, which, in a sense, makes of the manager an official greatly susceptible to public opinion and public pressure.

On the other hand, the charter grants tremendous authority to the commissioners in the way of reorganizing, abolishing, and creating offices or departments of government. All powers exercised under older charters are reserved to cities adopting this new plan, and new authority has been added, particularly with respect to city planning and public building activities. Even a casual examination and comparison of the three general charter forms of city government demonstrates the superiority of the commission manager charter over all others both as to authority granted and to be exercised, and as to newer innovations of municipal government. It may have been that the legislature, in attempting to provide for what it thought it saw coming, went too far, and the value of this charter has not yet been recognized.

Conclusion

It is perhaps already apparent that Louisiana has a mixed special-general-classified-optional charter system. To the uninitiated the situation seems chaotic. Actually, it seems to have resulted in a remarkable amount of self-determinism for municipalities.

Special legislation for municipalities with more than twenty-five hundred inhabitants does not seem to have worked a hardship upon the municipalities themselves, for almost all of this legislation has been of an authority-granting character, and a very small portion only has been in any sense restrictive. In only one instance does this increasing municipal power appear to be defective. Too many cities, towns, and villages in Louisiana have undertaken projects beyond their financial resources. The results of this are obvious, and are pointed out elsewhere in this study. On the other hand,

this method of granting almost unlimited municipal authority has not altogether deprived the state of the right to step in and correct abuses where necessary, which may be the saving feature of the present situation.

Thus it may be seen that municipal home rule in Louisiana is not necessary from the point of view of determining local questions. The authority has been granted although in a different form. Neither does it appear that constitutional home rule is necessary for amending charters because of the liberal method already provided.[27]

Municipalities in Louisiana are still in what might be called the formative stage. At present there are only nineteen with populations of five thousand or more.[28] There are only eight with populations of ten thousand or more. And there are only four cities with more than twenty-five thousand inhabitants each. These last four are always legislated for in a special way. Nearly all cities with populations of seven thousand five hundred or more have adopted commission government. This leaves practically all towns and villages under the mayor aldermen form of government. But the needs of the latter are simple and few and their authority at present seems sufficient for their needs.

The salaries of officers of cities under commission government are fairly adequate. The salaries of municipal officers under the mayor aldermen form vary because their older charters are not uniform or because the council itself has authority to fix them.

It is not so necessary to advocate the short ballot in municipal government, since the council in every case selects all officers with the exception of the marshal and constable, and occasionally the clerk of court. All municipal officers should be appointed by their superiors, just as all municipal employees are appointed by municipal officers.

There is no adequate supervision or control of local government in Louisiana. The control exercised by the legislature has been of a general type and not at all satisfactory. So free has the legislature been in granting power to municipalities that the state courts also seem to have become

[27] See *Annual Report of the Secretary of State* for number of charter amendments each year.

[28] See Appendix G.

affected and to have assumed a most tolerant attitude.[29] This leaves administrative control, of which there is none at present but of which there could be. Fortunately, the state has a supervisor of public accounts selected by the governor and confirmed by the state senate. One of his most important duties is to examine the accounts of all political subdivisions of the state, except those of municipalities, at least once a year. Since any control over local government must necessarily be of a financial character, the duties of the supervisor should be enlarged to include the examination of the accounts of any municipality when petitioned to do so by twenty-five resident taxpayers, with authority to halt all financial activities until the results of his examination can be published in a local newspaper. This provision would not conflict with the home rule philosophy of the average Louisiana citizen. Neither would it place the state in an unfavorable position. And knowledge gained by being confronted by the facts is never harmful.

Finally, there seems to be no central clearing house for information of a municipal interest, nor an open forum where the problems of municipalities can be considered and discussed. An organization similar to the Minnesota League of Municipalities, or to the Illinois Municipal League, is necessary both in scope and in function. Local problems are no longer of local significance alone. The experience of all local areas should be available to those seeking information and advice.

CHAPTER IX

The City of New Orleans and Orleans Parish

The City of New Orleans is coextensive in its limits with the Parish of Orleans. The commission council is the governing authority of the entire territory embraced within the parish, and is, to all legal intents and purposes, the police jury of Orleans Parish. The commission council of the city is

[29] See, for example, *Waterworks Co. v. Lake Charles*, 30 So. 289, 106 La. 65 (1901). Under authority of its charter Lake Charles could construct public works. It erected, maintained and operated a waterworks system to supply water for flushing the streets and gutters and for extinguishing fires, all public purposes. The court then held that this authority carried with it, by necessary implication, the lesser power to contract for supplying the town with water. This case is not out of the ordinary.

therefore both a state and municipal agent for all purposes of local government.[1]

From 1812 to the present all Louisiana constitutions have reserved to the citizens of New Orleans the right to elect their public officers.[2] Exceptions have been made from time to time, but in the main that right is still preserved. So generous has the state been in granting autonomous authority to the city that in 1919 the state supreme court stated, "No city in our country has, we dare say, broader powers than the City of New Orleans."[3]

In 1912, as the result of a wave of reform agitation, a new charter was granted New Orleans providing for a form of commission council government.[4] The commission plan was really superimposed upon the older mayor council form, with the result that there are many striking similarities to previous charter forms of government, particularly those of 1868 and 1896.

The city is divided into the seven old municipal districts, which in turn are subdivided into seventeen wards of which each is also a representative district in the lower house of the state legislature.

The mayor, who is commissioner of public affairs, and the commissioners of public finance, public property, public safety, and public utilities, are all elected from the city at large for four year terms. At the first council meeting the members, except the mayor, are assigned as heads of departments by a majority vote in each case. Department heads also may be changed at any time. The department of public affairs includes law, the civil service, and publicity. The mayor is really the political leader of both council and city inasmuch as he is the only one elected to a particular position. The department of public finance includes the divisions of assessments, the receipt and expenditure of money, and accounts. The department of public safety includes the divisions of fire prevention and relief, police, health, and charity and relief. The department of public utilities has charge of all public service corporations and the granting of franchises on approval by the council. The department of public

[1] *N. O. v. Beck*, 71 So. 888, 139 La. 595 (1916); *N. O. v. Board*, 115 So. 131, 164 La. 1020 (1927).
[2] *Const. 1812*, art. 6, sec. 23; *Const. 1921*, art. 14, sec. 22; *Board v. N. O.*, 36 So. 807, 112 La. 957 (1904).
[3] *Le Bourgeois v. N. O.*, 82 So. 268, 145 La. 274 (1919).
[4] *Acts of La.*, 159 of 1912, as amended by *Ibid.*, through 1932.

property looks after streets and alleys, parks and playgrounds, public buildings, public baths, and all other public property. The mayor receives ten thousand dollars per year, and each of the other commissioners receives six thousand dollars per year.

All powers of the corporation are vested in the mayor and council. The powers of the city may be divided into three classes: those that ordinarily belong to any corporation, such as the right to own property, to sue and be sued in its corporate name, and others of that class; those of a mandatory character that include the preservation of peace, cleanliness and health, the power to keep open all streets and public places,[5] provide an adequate fire and police system, light all streets and public places, maintain levees and dikes, and to organize and maintain free public schools and libraries; and those of a discretionary character that include the regulation, maintenance, improvement, and disposition of streets and alleys,[6] the regulation of drainage and property grading, sidewalks and buildings, theatres and public dance halls, the regulation and authorization of the use of streets for busses and other utilities, and other powers of a like nature.

In addition to these powers the mayor is authorized to enforce all state laws, charter provisions, and city ordinances; to sign all contracts, bonds, and other instruments requiring the assent of the city, and see that they are faithfully performed; to supervise all departments, boards, and commissions of the city; to act as a member of each board, commission, or body created or authorized by the charter or by any city ordinance; and when present, to vote on all questions before the council.

All members of the council are subject to recall. A further potential limitation on the council is the provision for the initiative and referendum, but the requirements are so exacting that it is practically impossible for either to operate effectively.

Three members of the council constitute a quorum, and three votes are necessary to pass a measure. The mayor presides over all meetings but he exercises no veto power. Each resolution and ordinance must be signed by the mayor, or by

[5] *Pub. Service Comm. v. Morgans*, 264 U. S. 398 (1923); *N. O. v. Taranto*, 90 So. 224, 149 La. 864 (1921).
[6] *Schernbeck v. N. O.*, 98 So. 84, 154 La. 676 (1923).

two councilmen, and recorded before it may be enforced. Ordinances are required to be read in full at one meeting, lie over a week, and then be acted upon. The council meets on the first Tuesday evening of each month, and oftener when necessary. All council meetings are public.

The commission council appoints the following officials for four years at salaries determined by the council: the city attorney, judges and clerks of the recorders' courts,[7] the auditor of public accounts, the chief engineer of the fire department, the superintendent of police, the superintendent of public health, the city engineer, the clerk of the commission council, the city notary, and the city chemist. Any official appointed by the council may be removed following a vote for such action by four council members.

The mayor, on his own authority, appoints a parking commission, an Audubon Park commission, a public belt railroad commission, a board of managers for the orphans' home, and a city alienist.

The governor, on his own authority, appoints the members of the New Orleans dock board, the members of the New Basin Canal shell road board, the board of jury commissioners, and the registrar of voters. With the consent of the state senate he appoints a board of pilot commissioners, the custodian of the notarial archives, and the members of the New Orleans levee board.

Boards and commissions composed in whole or in part of ex officio and of appointed members include the city board of liquidation, the sewerage and water board,[8] the board of health, the playgrounds commission, the Delgado Central Trades School board, the board of police commissioners, the board of fire commissioners, the board of public service utilities, the civil service board, and the public baths commission.

Popularly elected boards, commissions, and officers include the state tax collector, the Orleans Parish school board, the board of assessors, the judges, clerks, and constables of the two city courts, the civil sheriff, the criminal sheriff, the coroner, the judge of the juvenile court, the register of conveyances, the district attorney, the recorder of mort-

[7] Recorders are municipal officers although created by the legislature and provided for in the constitution. *State v. Goff*, 65 So. 481, 135 La. 885 (1914).

[8] Only the legislature may decide whether the board may adjust its rates so as to make the system self-sustaining. *State v. N. O.*, 92 So. 892, 151 La. 988 (1922).

gages, and the judges and clerks of the civil and criminal district courts.

Several outstanding features of the government of New Orleans warrant considerable attention and criticism.

Commission government was superimposed upon the mayor council plan of government without changing the old structural features and forms prevailing under the latter system.

Commission government was not really adopted in its entirety. The commissioners, individually and collectively, exercise only a portion of the municipal powers. The existence of numerous boards, commissions, and ex-officio bodies prevents commission responsibility, individually or collectively, although there is little question that they exercise enormous power in their personal capacities.

The board and commission system for the performance or supervision of particular functions was retained in its entirety, notwithstanding the fact that commission government is supposed to do away with such bodies and vest full authority and responsibility for the affairs of the city in the commission.

The civil service board, consisting of the mayor and two other members appointed by the council, is a civil service board in name only. It is really a political body filling city positions with political followers.[9]

The obvious remedy for such a heterogeneous and complex governmental system is either the simplified commission government plan, of which the present organization is but a poor imitation, or the city manager plan. Both are suggested by the Bureau of Municipal Research in place of the present system; the simplified commission form as the easiest to adopt, the manager plan as the most logical, yet more difficult to secure in view of the many statutory and constitutional changes necessary for such a plan.[10]

The adoption of the simplified commission form would involve the fewest changes and would provide a system presumed to be in effect at present. The multitude of boards, commissions, and ex-officio bodies would be abolished, and

[9] See, for instance, White, L. D., *Trends in Public Administration*, p. 217. "The constant use of the New Orleans city government as a spoils system has prevented any real development in the administrative side of the government."

[10] See *Administrative Survey of the Government of the City of New Orleans*, Municipal Survey Commission of New Orleans, (1922). For the local point of view see *A Fiscal and Administrative Survey of the City of New Orleans*, 1933.

the commission council would be given this additional authority with the accompanying commensurate responsibility, providing a definite municipal leadership for the city instead of the blind political devotion so apparent in many instances. Such a plan would necessitate only a few statutory changes and would not effect the state agencies or constitutional agencies such as the parish school board, the sewerage and water board, and the public belt railway commission.

If the state judicial system were left as it is, few changes of great importance would be necessary for the adoption of the manager plan. The commission council would act only as the policy determining and directing body, with full administrative powers vested in a manager appointed by and responsible to the council. If necessary the council might be increased slightly in size, but it should never consist of more than twenty members at the most.

The manager would appoint the heads of the following city departments and they would be responsible to him; finance, public works, public safety, public welfare, parks and recreation, law, public utilities, and water supply.

In addition to appointing the manager the council would also appoint the judges of the city courts, of the juvenile court, and of the recorders' courts, the clerk of the city council, the city auditor, the public belt railway commission, and the board of health. The last two bodies would be under the appointing power of the council since they are in a measure policy determining in character.

The above criticisms and recommendations result in the conclusion that the last fifty years of institutional change in New Orleans have not been as productive as were the first fifty years. One might well wish that governmental development in New Orleans had ceased in 1870, when the logical result of years of growth and change seem to have been achieved. But the group effecting that reorganization of municipal government was considered an alien and uninvited one, and such was the intense feeling against its members that after their downfall everything with which they were in any way connected was immediately abolished.

PART IV

CHAPTER X

The Administration of Justice

In 1928 the statement was made that the Louisiana Constitution of 1921 provided for a more highly unified judicial system than was to be found in any other state.[1] Three years later the same authority was not so enthusiastic, simply stating that the constitution vests in the supreme court "a general supervising control" over all inferior courts.[2] The reason for this change in opinion is probably due to the fact that this unifying authority has rarely been employed to bring about any notable measure of unification and co-ordination. Is this condition due to fault on the part of the supreme court in carrying out this new power, or is it due to a too general and ambiguous constitutional grant of authority? It would seem that both are equally responsible, for all courts are rather hesitant in over-ruling old forms of procedure, and especially so if their authority has the background of opinion that prevailed in the Constitutional Convention of 1921 when that body rejected a plan for a highly centralized and unified state judicial system, and substituted the one now provided.[3]

As it is, however, the Louisiana judicial system at least has made an important beginning in reform along these lines. The system assumes the appearance of a pyramid, with the supreme court at the apex. Courts of appeal, juvenile courts, district courts, and municipal courts complete the organization. From a structural point of view little more can be desired. There is not the over-lapping of jurisdiction found in the courts of so many states. Generally speaking, there is only one trial court, the district court. Municipal courts have jurisdictions combining all that of the justice of the peace and a part of the civil jurisdiction of the district court, made necessary by a more complex life in urban communities of the state. Juvenile courts are, of course, specialized in their

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Two studies of the judiciary of Louisiana have been made just recently. The first, *The Louisiana Judiciary*, by B. R. Miller, is an excellent historical treatment of the subject by a practicing attorney of the state. The second is contained in a work entitled *A Study of the State Government of Louisiana*, by Melvin Evans, in which the author has made a fair study, but one not intended to be complete.

[1] Ogg, F. A. and Ray, P. O., *Introduction to American Government*, 3rd ed., p. 817.

[2] *Ibid.*, 4th ed., p. 831.

[3] See *Journal of the American Judicature Society*, Vol. V, p. 19, for the judiciary article proposed by the Louisiana State Bar Association.

nature. Courts of appeal handle only appealed civil cases, and much of their work is final in its effect. This leaves the supreme court as a tribunal of last resort in the more important civil cases, and in all criminal cases. At the other extreme are found the petty tribunals, not, strictly speaking, courts. They include justices of the peace and the recorders' courts of New Orleans.

General Provisions

The judicial power of the state is vested in the supreme court, courts of appeal, district courts, and in the special and petty courts subsequently provided for.[4] The courts of the state administer both legal and equitable relief, and all judges are conservators of the peace throughout the state.[5] No functions, other than judicial, may ever be attached to any court of record or to its judge, nor may any judge, except judges of city courts, practice law.[6]

The actions of judges of the supreme court and of courts of appeal in issuing prerogative writs are subject to review by the court of which they are members.[7] Any judge of a court of record may be removed by judgment of the supreme court for high crimes and misdemeanors in office, gross misconduct, incompetency, favoritism, corruption, extortion, oppression in office, or for habitual drunkenness.[8] Suits of this nature may be instituted by the attorney general or district attorney, but such suits must be instituted when requested in writing by the governor, by twenty-five citizen taxpayers, or by one-half of the practicing attorneys residing in the district from which the judge is elected. Judges are also liable to impeachment, and to removal on address by the state legislature.[9]

The supreme court may assign district judges to other district courts in order to secure the prompt and efficient administration of justice.[10] It may also assign district judges to courts of appeal when judges of those courts are called to sit with the supreme court. Inferior courts are required to report on the work and business before them, and the su-

[4] *Const. 1921*, art. 7, sec. 1; *State v. Police Jury*, 30 La. Ann. 287 (1878).
[5] *Ibid.*, and *Weinberger v. Insurance Co.*, 5 So. 728, 41 La. Ann. 81 (1889).
[6] *Ibid.*, sec. 2; *State v. Tissot*, 4 So. 482, 40 La. Ann. 598 (1888).
[7] *Ibid.*, sec. 2.
[8] *Ibid.*, art. 9, sec. 5.
[9] *Ibid.*, secs. 1-3.
[10] *Ibid.*, art. 7, secs 12-13.

preme court may investigate the affairs of lower courts when necessary.

Each district judge may issue writs of habeas corpus in behalf of any person in actual custody in cases within their respective jurisdictions.[11] All judges may, in aid of their respective original, appellate, or supervisory jurisdictions, issue writs of mandamus, certiorari, prohibition, quo warranto, and all other necessary writs, orders and processes.[12] Whenever any of these writs are refused, the appellate courts must indicate the reason.

Provision is made for the court room and offices of the supreme court in the new capitol in Baton Rouge, and their expense is borne by the state. The court rooms, offices, and equipment of courts of appeal, district courts, and their clerks and officers, are provided by the parishes concerned.[13]

Any judge of a court of record, seventy-five years of age, is retired. If he has served continuously on any court of record in the state for twenty years, he is retired on two-thirds pay.[14]

The legislature is expressly prohibited from interfering with or changing the term of office or the salary of any judge of any court in the state during his term in office.[15]

Organization, Selection, and Jurisdiction of the Judical Department, Appellate Courts

Judges of the supreme court are elected from six supreme court districts for terms of fourteen years.[16] There are seven

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[11] *Ibid.*, sec. 2.

[12] The great and primary object of the writ of habeas corpus is to afford judicial relief to parties who are illegally deprived of their liberty. *State v. Duson*, 36 La. Ann. 857 (1884). A mandamus is an order issued in the name of the state, by a tribunal of competent jurisdiction, and addressed to an individual or corporation or court of inferior jurisdiction, directing him or it to perform some certain act belonging to the place, duty, or quality with which it is clothed. *Terry v. Stauffer*, 17 La. Ann. 306 (1865). But a mandamus is only intended to enforce a clearly recognized right and compel the performance of a ministerial duty with respect to that right. Its purpose is to supply the want of an adequate remedy and not to supersede the remedies that are available. *State v. Police Jury*, 29 La. Ann. 146 (1877). The function of the writ of certiorari is to make possible changes in matters which have taken such shape in inferior courts that they may not be remedied by other means. It is a substantive and far-reaching corrective writ. *State v. Judge*, 21 So. 94, 48 La. Ann. 1501 (1896) and *State v. Vorhies*, 23 So. 107, 49 La. Ann. 1717 (1897). The writ of prohibition is a writ directed to an inferior court to prevent further action in a case which the supervising court may consider outside the jurisdiction of the lower court. *Code of Practice*, sec. 846. The writ of quo warranto is the proper remedy to settle all disputes relating to offices in any corporation. *State v. Simms*, 152 So. 395 (1934). But see *Acts of La.*, 8 of E. S. 1934, prohibiting judges from issuing orders or writs in connection with calling out the national guard.

[13] *Const. 1921*, art. 7, secs., 14 and 27; *Acts of La.*, 111 of 1880 and 180 of 1932.

[14] *Ibid.*, sec. 8, as amended 1928.

[15] *Ibid.*, sec. 40.

[16] *Ibid.*, secs. 4-9.

members, elected in Congressional elections, two of them from the first district.

Since this study is one of local government, insofar as the lower courts are concerned the supreme court has six major functions.

In the first place, the supreme court has control of and general supervision over all inferior courts.[17] This authority has not been used as one might infer from the wording of the constitutional provision. It has, however, been used in a negative sense, that is, by setting certain standards through requiring reports and information from time to time that might lead to the professional embarrassment of the inferior judges if peculiar or unusual conditions were brought to light.

Secondly, the supreme court has original jurisdiction in all suits for the removal of judges of courts of record.

In the third place, the supreme court has original jurisdiction in all disbarment cases involving the professional misconduct of members of the bar;[18] and it may suspend or disbar under rules that it may adopt.

In the fourth place, it has appellate jurisdiction in all civil cases involving two thousand dollars or more, exclusive of workmen's compensation cases or suits for damages growing out of injuries, a provision that results in over-loading the court and reducing the benefits of the courts of appeals as appellate courts.[19]

It has appellate jurisdiction in all cases involving the constitutionality or legality of any tax, local improvement assessment, toll, or impost levied by any parish, municipality, board, or subdivision; in all cases involving the legality or constitutionality of any fine, forfeiture, or penalty imposed by those public corporations; and in all cases wherein an ordinance of such corporations has been declared unconstitutional.[20]

Finally, it has appellate jurisdiction in all criminal cases on questions of law alone, whenever the penalty of death or imprisonment at hard labor may be imposed, or where a fine

[17] *Ibid.*, sec. 10.
[18] *State v. Webre*, 75 So. 111, 141 La. 448 (1917).
[19] *Const. 1921*, art. 7, sec. 10. Also see Evans, *op. cit.*, p. 199.
[20] *Idem.*

exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed.[21]

For appellate purposes the state has been divided into three circuits, the first two of which are in turn divided into three districts each, with one appellate judge elected from each district for a term of twelve years at Congressional elections.[22] In the third circuit the judges are elected from the whole circuit. Appellate judges must be citizens of the United States and qualified voters of the state, must be learned in the law, and must have practiced law in the state for at least six years prior to their election. They are required to have been residents of the judicial district from which they are elected or appointed for at least two years preceding the election or appointment. Vacancies are filled by the governor with senatorial confirmation until the next Congressional election, at which time the successor is elected for the remainder of the term.[23] Salaries of appellate judges are eight thousand dollars per year, with an additional salary of one thousand dollars for judges of the Orleans appellate court paid by New Orleans.[24]

Courts of appeal consist of three judges each, two of whom constitute a quorum and who must concur to return a verdict. When there are only two judges and they cannot agree they appoint a district judge, or a lawyer having the qualifications of a district judge, to sit on the case.[25] Should one or more judges of a court of appeal be absent, recused,[25a] or unable to serve, the remaining judge or judges may appoint temporarily to the vacant positions in the same manner. In case a docket is congested, upon the application of the court, the supreme court may assign three district judges to serve temporarily as an additional section until the docket is cleared.[26]

Courts of appeal have appellate jurisdiction only, civil and probate, over cases in which the district courts or the civil district court of Orleans Parish have exclusive original jurisdiction, regardless of the amount involved, or concurrent jurisdiction exceeding one hundred dollars exclusive of interest,

[21] *Idem.*
[22] *Ibid.*, secs. 19-20 and 76-78.
[23] *Ibid.*, sec. 21.
[24] *Acts of La.*, 2 and 16 of E. S. 1928.
[25] *Const. 1921*, art. 7, sec. 26.
[25a] Excused by voluntary action or by order of a superior court from presiding at a trial.
[26] *Ibid.*, sec. 80.

and of which the supreme court is not given jurisdiction. All appeals may be both upon the law and the facts.[27] All cases appealed are tried on the original record, pleading, and evidence.[28] The court of appeals of the third circuit (Orleans Parish) hears all cases appealed from the city courts of New Orleans, from the civil district court of Orleans Parish, and from the district courts of St. James, St. John the Baptist, St. Charles, Jefferson, Plaquemines, and St. Bernard parishes.[29] The fee for appealing to the court of appeal is only five dollars.

Courts of appeal may certify to the supreme court any question of law concerning which, for a proper decision, it desires the instruction of the higher court; and the supreme court may give its instruction, based upon the original record, or it may require that the whole case be sent up for final adjudication.[30] On the other hand, within thirty days after a court renders and enters a judgment in any case, the supreme court may, by writ of certiorari, mandamus, or prohibition, have the case brought before it for its review and determination.[31]

Any judge of a court of appeal is recused in cases before his court for any one of the following reasons: interest in the case; relationship to one of the parties within the fourth degree; if he has been employed or consulted in the case; if he is the father-in-law, son-in-law, or brother-in-law of one of the parties; or if he has performed any judicial act in the case in any other court.[32]

In the first and second circuits the sheriff of the parish in which any session of a court of appeal may be held attends, or has a deputy attend, to execute the orders of the court.[33] In New Orleans the civil sheriff, or a deputy, performs these duties. Courts of appeal may appoint their own clerks and deputies to serve during their pleasure, or they may use the clerks and deputies of the district courts. Clerks of courts of appeal of the first and second circuits receive three thousand six hundred dollars per year which includes

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[27] *Ibid.*, sec. 29.
[28] *Ibid.*, sec. 27.
[29] *Ibid.*, secs. 76-78.
[30] *Ibid.*, sec. 25; *Acts of La.*, 191 of 1898.
[31] *Idem.*
[32] *Ibid.*, 10 of 1880.
[33] *Const. 1921*, art. 7, sec. 28.

traveling expenses.[34] They must likewise post a bond of one thousand dollars for the faithful performance of their duties. The clerk of the third court of appeals (Orleans Parish) receives four thousand five hundred dollars per year, and he must post a bond of three thousand dollars.[35] All fees paid into courts of appeals are then paid into the state treasury.

Courts of appeal have succeeded in lightening the appellate load of the supreme court, but not to the extent that an appellate court should. As noted before, the appellate jurisdiction of the supreme court applies to all cases involving amounts of two thousand dollars or more, thus limiting the appellate jurisdiction of courts of appeal to cases involving sums between one hundred dollars and two thousand dollars; and whenever a case in this latter class excites enough interest, or if the appellate court asks the supreme court for a ruling, the whole case may be transferred to the higher court by means of one of the writs described above. There is no reason why this jurisdiction should not be considered final unless the supreme court itself takes a hand. In the past, appeals from decisions of courts of appeal have been allowed as a matter of right and not as a matter of law or of policy. The result has been a constantly growing docket for the supreme court. Furthermore, there is no reason why the appellate jurisdiction of courts of appeal should not be extended to include cases involving amounts between one hundred dollars and five thousand dollars. The rights of litigants would still be protected through the reviewing power of the supreme court.

Trial Courts

The general trial courts of Louisiana are the district courts, with both original and exclusive civil and criminal jurisdiction. As will be noted later, district courts and juvenile courts are intimately connected, for district court judges also act as juvenile judges, except in Caddo and Orleans parishes, but separate records are kept and separate sittings are held for juvenile cases. Municipal courts in Louisiana occupy a peculiar position. There are three classes, based upon the populations of municipalities, with a mixed civil and criminal jurisdiction, including suits triable before justices of the peace

[34] *Acts of La.*, 53 of 1926.
[35] *Ibid.*, 102 of 1928.

and civil suits of a smaller character ordinarily triable before district courts. In the latter group, many of the cases may be appealed only to the courts of appeal, depending upon the extent of the civil jurisdiction of the municipal court, the other cases being appealed to the district courts. The reason for the creation of municipal courts seems a necessary one. They take the place of justices of the peace in municipal areas, they relieve the district courts of a large number of small cases which would ordinarily over-crowd a district court docket, and in some cases they are courts of record with appeal direct to courts of appeal.

Twenty-six judicial districts have been created, each district including from one to five parishes, and each district with at least one district judge elected for six years at Congressional elections.[36] The district courts of Orleans Parish are described separately. The number of judges in each district range from four in the first district to two each in the fourth, eighth, eleventh, fifteenth, nineteenth, and twenty-first districts, and to one each in the other nineteen districts.[37] The legislature may rearrange judicial districts and change the number of judges in each district by a two-thirds vote of the members of each house.[38] District judges must have been actual residents of their districts for two years prior to their election, must be learned in the law, and must have practiced at least five years in the state. Their salaries are five thousand dollars per year. Vacancies in office are filled by the governor with senatorial confirmation where the unexpired portions of the terms are less than one year. Otherwise there must be a special election called by the governor to be held within sixty days after the vacancy occurs.[39]

District courts have original jurisdiction in all civil matters, concurrently, however, with justices of the peace in cases involving sums of less than one hundred dollars exclusive of interest;[40] in all cases where the title to real estate, or the right to office or other public position, or where civil or political rights are involved; and in all cases where there are no

[36] *Const. 1921*, art. 7, secs. 31-32, as amended; *Acts of La.*, 261 of 1928; *State v. Williams*, 29 La. Ann. 770 (1877).
[37] See *Acts of La.*, 37 of 1926, 205 of 1926, 52 and 261 of 1928, 58 of 1930, 129 of 1926, and 54 of 1928.
[38] *Const. 1921*, art. 7, secs. 33-34.
[39] *Ibid.*, sec. 69; *In re Perez*, 88 So. 657, 146 La. 378 (1920); *Wright v. Carmouche*, 99 So. 519, 155 La. 657 (1924).
[40] See *Acts of La.*, 223 of 1926 and 232 of 1932, which seem to place justices of the peace at a distinct disadvantage.

specific amounts.[41] They are courts of record except in cases where they have concurrent jurisdiction with justices of the peace. They have unlimited, exclusive, and original jurisdiction in all criminal cases and in probate and succession matters; where the state, a parish, a municipality, or other political corporation or succession is a party defendant; and in all proceedings for the appointment of receivers or liquidators to corporations or partnerships. They also have appellate jurisdiction of all civil cases from justices of the peace except such as concern immovable property claimed as a homestead.[42] Persons sentenced to pay a fine or to imprisonment by recorders' courts, municipal courts, by mayors' courts, or by justices of the peace, are entitled to an appeal to the district court of the parish, and such cases are re-tried without juries. They may try misdemeanors at any time and, when the jury is waived by the defendant, all cases not capital or necessarily punishable at hard labor.[43] District judges may also issue writs of habeas corpus, mandamus, certiorari, prohibition, quo warranto, and any other necessary writs and orders.

All district courts hold continuous sessions during ten months of the year,[44] and in each district composed of more than one parish the judge sits alternately in each parish as may be required. His traveling expenses are paid by the state when he does not sit in the parish where he resides.[45] District judges are authorized to hold adjourned or special terms whenever they find them necessary.[46] When a judge is absent, recused, or unable to act, the judge of an adjoining district may grant all of the orders of the court of the first judge.[47] In case the district judge does not appear on the first day of any term, the sheriff adjourns the court from day to day for not more than three days.[48] The judge may also adjourn court to a day preceding the next regular session by written order to the sheriff.

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[41] *Const. 1921*, art. 7, sec. 35; *Bunkie Brick Works v. Police Jury*, 37 So. 970, 118 La. 1062 (1905); *State v. Foster*, 36 So. 200, 111 La. 1087 (1903); *Reynolds v. Carroll*, 38 So. 470, 114 La. 610 (1905).

[42] *Ibid.*, sec. 86; *State v. Vorkies*, 23 So. 107, 49 La. Ann. 1717 (1897); *State v. Duggon*, 26 So. 446, 51 La. Ann. 1482 (1899); *State v. Burris*, 125 So. 580, 169 La. 520 (1929).

[43] *Ibid.*, secs. 2 and 42.

[44] *Ibid.*, sec. 43; *Acts of La.*, 168 of 1898; *State v. Freddy*, 48 So. 58, 118 La. 468 (1907); *Carr v. Lumber Co.*, 68 So. 747, 137 La. 419 (1915).

[45] *Acts of La.*, 206 of 1926.

[46] *R. S.* sec. 1981, and *State v. Colbert*, 56 So. 278, 129 La. 826 (1918).

[47] *Acts of La.*, 171 of 1894, as amended by 127 of 1910.

[48] *R. S.* sec. 1984; *State v. Reed*, 21 So. 782, 49 La. Ann. 704 (1897).

Judges of district courts are recused for the same reasons as are judges of courts of appeal, but being a witness in a case is not a ground for recusation.[49] The interchange of district judges for the trial of recused cases, or the appointment of a judge from an adjoining parish, or of a qualified attorney as judge ad hoc, is provided for.[50] A judge may not be recused, however, after the trial has been held and judgment rendered. Provision for the change of venue of criminal cases is made so as to protect defendants who are doubtful of securing a fair and impartial trial in their home domiciles.[51]

Each district court keeps two dockets in addition to the criminal docket, one covering all probate cases, the other including all other civil cases.[52] District judges may formulate rules for the regulation of practice in their courts and the mode of setting cases for trial, not in conflict with the various codes, statutes, and constitutional provisions on these subjects.[53] Criminal cases have preference over all other cases, interdiction suits are next in importance, and suits in which the right to office is involved, or in which the state, a police jury, or a municipality is a party come third in order of preference. Other suits follow in the order in which they appear on the docket.[54]

In all cases appealable to the supreme court, the district judge is required to deliver his charge to the jury in writing, if counsel of either party requires it.[55] District judges are required to decide all cases taken under advisement within thirty days after the cases are submitted for their decision; and they must pass on all motions, applications for new trials, and exceptions within seven days from the time they are made,[56] or, on the written consent of the attorneys of both parties, this time may be extended for a further period of ten days. Rehearings in civil suits must be granted by the court if there is reason for such action and if prayed for, within

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[49] *Const. 1921*, art. 7, sec. 88; R. S., 3192; *Acts of La.*, 40 of 1880.

[50] *Acts of La.*, 70 of 1876, 40 of 1880, 74 of 1884, 185 of 1898, and 102 of 1932; *State v. Bordelon*, 75 So. 429, 141 La. 611 (1917).

[51] *R. S.*, secs. 3901-10.

[52] *R. S.*, sec. 1933.

[53] *R. S.*, sec. 1935; *Acts of La.*, 168 of 1898; *Succession of Trosclair*, 1 La. App. 209 (1924); *Farm Bureau v. Farris*, 128 So. 894, 11 La. App. 295 (1929). Also see *Code of Practice* and *Code of Criminal Procedure of Louisiana*.

[54] *R. S.*, sec. 1938; *Acts of La.*, 226 of 1914.

[55] *R. S.*, sec. 1966; *State v. Tisdale*, 6 So. 579, 41 La. Ann. 838 (1889); *State v. Roy*, 43 So. 59, 118 La. 485 (1907).

[56] *Acts of La.*, 72 of 1884, as amended by 94 of 1898; *Shreveport Co. v. Johnson*, 121 So. 851, 10 La. App. 487 (1929); *McGaw v. O'Bierne*, 50 So. 819, 124 La. 989 (1909).

three judicial days after delivering judgment,[57] and judgments may be revised by granting rehearings. Judges of district courts may make orders in chambers instead of in open court.[58] Reporters are appointed by the courts.

As is natural in general trial courts, the jurisdiction of district courts is a wide and varied one. It is not, however, final in civil cases involving amounts of more than one hundred dollars nor in criminal cases. In trials for minor crimes and misdemeanors, the jurisdiction of district courts might well be final for terms of imprisonment up to and including one year or for fines of not more than five hundred dollars subject to review of the case on the original record by the supreme court by the use of the prerogative writs. A similar final jurisdiction in civil suits involving sums of not more than five hundred dollars under the same restrictions might do much to lessen the appellate work of courts of appeal and of the supreme court alike. Such a change will soon be necessary if it is not already so, for, since 1921, seven additional district judges have been provided throughout the state. Yet the courts of appeal and the supreme court have remained untouched since that date in spite of the increasing appellate burden that those courts must now bear.

Each parish has a clerk of the district court, elected for four years. He is likewise ex officio parish recorder of conveyances, mortgages, and other acts.[59] District clerks receive from eighteen hundred to five thousand dollars per year as salaries, with clerical allowances in addition.[60] All fees and charges collected by district clerks are deposited in the "Clerk's Salary Fund" of each parish, out of which all expenses are paid. If there is any balance at the end of the year it is turned into the parish treasury.[61] District clerks may appoint deputies with the approval of district judges, and the court may continue one of them in office as clerk in the event of a vacancy, until a successor is appointed, elected, or qualified.[62] Clerks of district courts must each post bonds of ten thousand dollars.[63] Vacancies in the office are filled

[57] *Acts of La.*, 10 of 1926; *Jacobs v. La Grange*, 119 So. 588, 9 La. App. 409 (1929); *West v. Green*, 181 So. 595, 15 La. App. 216 (1930).
[58] *R. S.*, sec. 1936; *Acts of La.*, 15 of 1882 and 68 and 77 of 1924; *Laenger v. Dindinger* 86 So. 788, 148 La. 190 (1920).
[59] *Const. 1921*, art. 7, sec. 66; *Acts of La.*, 58 of 1880.
[60] *Acts of La.*, 14 of E. S. 1918, as amended by *Ibid.*, 188 of 1924 and 208 of 1928.
[61] See *Acts of La.*, 101 of 1870, as amended by *Ibid.*, 99 of 1876, 208 of 1898, and 67 of 1928 for fees collected by district clerks.
[62] *Const. 1921*, art. 7, sec. 67.
[63] *Acts of La.*, 108 of 1922 and 58 of 1880.

by the governor with the advice and consent of the senate when the unexpired term is for less than one year. When the unexpired term is for more than a year a special election is held to fill the vacancy.[64]

District clerks receive decrees of the supreme court; record proceedings in successions; file all pleadings and bonds; furnish copies of decrees; issue writs, citations, and commissions; administer oaths; take inventories; and exercise certain powers when the judges are absent or recused.[65] They also issue writs of garnishment, execution, and orders for appeal; record all judgments; make appraisements, partitions, contracts and protests; and record all contracts, conveyances, and other deeds and titles. All district clerks should be appointed by the courts for whom they perform their duties, and not popularly elected on a basis of political qualifications.

Orleans Parish (New Orleans) has two district courts, a civil district court and a criminal district court, each separate and distinct from the other. Each district court consists of five judges, and the affairs of each court are administered by the court sitting en banc on questions of policy.

Judges of the civil district court are elected for twelve years and must possess the same qualifications for office as do district judges throughout the state.[66] Their salaries are five thousand dollars, with an additional one thousand dollars each per year from New Orleans, and two thousand five hundred dollars each per year from the "Judicial Expense Fund" for administering that fund, a total salary of eight thousand five hundred dollars for each civil district judge.[67]

The civil district court of Orleans is vested with the same original and exclusive civil jurisdiction as that of district courts throughout the state, except such as is vested in other courts of the city.[68] It has civil jurisdiction only and has no supervisory control whatsoever over the criminal district court or its judgments.

All cases, after having been filed in the civil district court, are assigned or allotted among the judges, and may be reallotted or reassigned among them according to rules adopted

[64] *Const. 1921*, art. 7, sec. 69.
[65] *R. S.*, sec. 3066 and *Acts of La.*, 204 of 1924; *Succession of Boyd*, 12 La. Ann. 611 (1857); *Riggs v. Eicholz*, 58 So. 977, 127 La. 745 (1911); *Wilder v. Jackson*, 91 So. 245, 150 La. 864 (1922); *McCoy v. Hunter*, 120 So. 767, 167 La. 1032 (1929).
[66] *Const. 1921*, art. 7, sec. 80.
[67] *Acts of La.*, 60 and 155 of 1928.
[68] *Const. 1921*, art. 7, sec. 81; *State v. Judge*, 1 So. 437, 39 La. Ann. 182 (1887).

by the court.[69] The different divisions of the court are all parts of one single court. The object in creating one civil district court only was to blend all probate and civil jurisdiction and to provide for an equal, indiscriminate distribution of cases among the judges composing it according to rules adopted by the court. The judge to whom a case is allotted or assigned has exclusive control over it from its inception to its final determination. Each division exercises all the powers of the court that it represents.[70] Judges of the court may sit in each other's places in cases of absence, and such judges may grant appeals from judgments handed down by the absent judges.[71] Continuous sessions are held for nine and one-half months of the year.[72]

The civil district judges often sit en banc to test bonds and sureties, to try or remove the civil clerk or the civil sheriff, and to pass on the selection of jurors.[73] In such cases the judge oldest in point of service presides and signs the orders issued by the court. When sitting en banc, other district judges may be called in or qualified lawyers acting as judges ad hoc may be appointed to fill temporary vacancies, or absences.[74]

In order to defray the salaries and expenses of the clerk of the civil district court, the clerks of the two city courts, the register of conveyances, the recorder of mortgages, and of their deputies and employees, a "Judicial Expense Fund" for civil judicial affairs was created for Orleans Parish. All fees collected in the above offices are turned in each day to the city commissioner of public finance and are credited to this fund. The judges of the civil district court sitting en banc control and regulate the disbursements of the fund, and the number of deputies and employees the officers of the civil district court may employ.[75] The court en banc also has authority to fix the costs, charges, and fees to be paid for all of-

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[69] *Acts of La.*, 103 of E. S. 1921, as amended by *Ibid.*, 10 of 1924; *Piazza v. McDermott*, 101 So. 269, 156 La. 980 (1924); *State v. Judges*, 27 So. 1031, 52 La. Ann. 125 (1900).

[70] *State v. Lazarus*, 33 La. Ann. 1425 (1881). See also *Acts of La.*, 119 of 1934, creating the office of commissioner of the civil district court to hear cases requiring more than six days each and to render opinions in such cases.

[71] *Bolden v. Barnes*, 42 So. 934, 118 La. 278 (1907).

[72] *Const. 1921*, art. 7, sec. 43.

[73] *Acts of La.*, 103 of E. S. 1921.

[74] *Ibid.*, 117 of 1918.

[75] *Const. 1921*, art. 7, sec. 95; *Acts of La.*, 195 of 1926; *State v. N. O.*, 112 So. 718, 168 La. 777 (1927).

ficial services, which may not exceed the amounts already established by law.[76]

A clerk for the civil district court of Orleans Parish is elected for a term of four years.[77] His salary is three thousand six hundred dollars a year and commissions for collecting inheritance taxes. He may appoint deputies and remove them with the approval of the court, or the court alone may remove them. Each judge appoints a minute clerk, who is likewise a deputy clerk of the court.

A register of conveyances and a recorder of mortgages are also provided for New Orleans.[78] They are elected for four year terms, their salaries and expenses are paid out of the "Judicial Expense Fund," and their duties are much the same as those performed by district clerks in their capacities as ex officio recorders of mortgages and registers of conveyances. As officers of the civil district court they are also subject to a large degree of regulation by the court. Vacancies in these offices are filled temporarily by the court sitting en banc.[79]

The criminal district court of Orleans Parish consists of five judges elected for twelve year terms.[80] Their salaries are eight thousand five hundred dollars per year each. Their qualifications for office are the same as those for district judges throughout the state.

The criminal district court is likewise divided into five sections, each under one judge; but they are not independent, all the branches forming a single court.[81]

All prosecutions instituted in, or cases filed on appeal with, the criminal district court, and all cases transferred to the court, are allotted equally by classes among the judges of the court.[82] Each judge has exclusive control over any case allotted to him, from its inception to its final disposition. The judges have, however, provided rules by which cases may be reallotted. Sitting together the court may provide rules regulating the order of trial and the proceedings in the trial not in conflict with the constitutional or statutory provisions of the state or its procedural codes. Monthly jury

[76] See *Acts of La.*, 136 of 1880 for fees which may be decreased but not increased.
[77] *Const. 1921*, art. 7, secs. 88-89; *Acts of La.*, 103 of E. S. 1921.
[78] *Idem.*
[79] *Ibid.*, sec. 93.
[80] *Ibid.*, sec. 82; *Acts of La.*, 193 of 1926 and 11 of 1928.
[81] *Acts of La.*, 114 of E. S. 1921; *State v. Lazarus*, 33 La. Ann. 1425 (1881).
[82] *Const. 1921*, art. 7, sec. 86; *State v Addotto*, 34 La. Ann. 1 (1882); *State v. Nailor*, 88 So. 374, 146 La. 516 (1919).

terms, beginning the first Monday in each calendar month and continuing to the first Monday of the next calendar month, are provided, with the various sections of the court rotating so that each section holds a continuous session of at least nine and one-half months each year.[83] The judges of the court may also hold additional jury terms when their dockets are crowded. When judges are absent or recused, the presiding judge, the eldest in point of service, assigns other judges temporarily.

The exclusive jurisdiction of the criminal district court includes the trial and punishment of all crimes, misdemeanors, and offenses committed within the parish, except the jurisdiction of cases vested in the recorders' courts.[84] It has appellate jurisdiction over all cases tried before the juvenile and recorders' courts of the city. Appeals from the latter are tried upon the record and upon the evidence offered, and are decided upon the law and the facts. It has general and supervisory jurisdiction over the recorders' courts of the city and may issue writs and orders to aid its jurisdiction. Judges may act as committing magistrates, and may hold preliminary examinations with authority to bail, discharge, or hold over for trial the cases examined.

The clerk of the criminal district court is elected for four years and receives five thousand dollars per year.[85] Other deputies and assistants are also provided. The fees collected by the criminal district clerk have been regulated by statute, subject to judicial action decreasing but not increasing them, and are used to pay the salaries and expenses of the office. Each judge appoints his own stenographer and minute clerk and they are commissioned as deputy clerks.[86] Vacancies in the office of criminal district clerk are temporarily filled by the court.[87] All clerks, civil and criminal, should be appointed by the courts for whom they perform their duties.

The civil sheriff and the criminal sheriff of New Orleans (Orleans Parish) are really only court officers, having no other law enforcing authority except such as is incidental to their duties as officers of the courts they represent, as law

[83] *Acts of La.*, 114 of E. S. 1921.
[84] *Const. 1921*, art. 7, sec. 83.
[85] *Ibid.*, sec. 89; *Acts of La.*, 8 and 4 of 1928.
[86] *Ibid.*, sec. 85; *Acts of La.*, 114 of E. S. 1921 and 333 of 1926.
[87] *Ibid.*, sec. 92.

enforcement in New Orleans is a function of the municipal police. For this reason these officers are described in this section. They are elected for terms of four years and their salaries, five thousand dollars per year for the criminal sheriff and six thousand dollars per year for the civil sheriff, are paid by the city and by the state respectively.[88] Deputies and assistants are also provided for. Each official act of a sheriff or deputy has a fee or charge attached to it, all of which are assessed against the costs of the cases in court and are turned into the "Judicial Expense Fund."[89] Vacancies in the offices of civil sheriff or of criminal sheriff are filled temporarily by the district court concerned.[90] Inasmuch as these officers are of a purely ministerial character there is no reason why they should not be appointed by the courts they represent.

The outstanding characteristic of the district courts of Orleans Parish is their flexibility and their ability to meet most emergencies arising within their sphere of activity. They are, however, subject to much the same defects and criticisms as far as their appellate and final jurisdictions are concerned as district courts throughout the state, and the recommendations made with respect to the latter could well be adopted in connection with the former.

A juvenile court is provided for each parish of the state presided over by the district judge who is ex officio juvenile judge.[91] The district clerk, or his deputy, is clerk of the juvenile court. In districts in which there are more than one district judge, each judge has full jurisdiction. The sessions of juvenile courts are held apart and separate from sessions of the district courts, and their records are kept separately. The court may sit in chambers and may hold its terms irrespective of the terms of the district court.

The juvenile court is a court of special jurisdiction created to deal with a particular problem of modern life, the juvenile. Its jurisdiction falls into four catagories:[92] cases of neglected or delinquent children; cases involving persons contributing to the neglect or to the delinquency of children; cases of persons

[88] *Ibid.*, secs. 88-89; *Acts of La.*, 87 of 1884 and 114 of 1932. But see *Ibid.*, 17 of E. S. 1934, restricting the fees of the civil sheriff.
[89] See *Acts of La.*, 136 of 1880 and 69 of 1922.
[90] *Const. 1921*, art. 7, sec. 98.
[91] *Ibid.*, sec. 52; *Acts of La.*, 88 of E. S. 1921; *State v. Ragan*, 51 So. 89, 125 La. 121 (1910).
[92] *State v. Jacobs*, 57 So. 905, 130 La. 245 (1912); *In re Owen*, 127 So. 619, 170 La. 255 (1930).

charged with violating any law aimed at the protection of the physical, moral and mental well-being of children; and cases of desertion or non-support of children. A delinquent child has been defined as being any child under seventeen years of age who, among other things, violates any law of the state or any ordinance of a village, town, city, or parish.[93] A neglected child is one seventeen years of age and under who is destitute and dependent on the public for support, without proper guardianship, or whose home, by reason of neglect, cruelty, depravity, or the indigence of its parents, guardians, or other persons, is an unfit place for the child.[94] A delinquent child may be tried in a juvenile court for an offense punishable at hard labor, but he cannot be tried in that court for a capital crime.[95] Appeals from the juvenile court lie to the supreme court and are allowed on questions of law only.[96] All proceedings are by affidavit, indictment, or information.

Probation officers and their compensation are provided by the juvenile judges with the advice and consent of the police juries concerned. Probation officers may make arrests and perform other duties incidental to their offices. No children who are arrested may be placed in any jail or police station where they may come in contact with criminals. A minor may, however, be sentenced to not more than sixty days in the parish jail, to be separated from the other prisoners, or to a fine of not more than fifty dollars.[97]

A child declared neglected or delinquent may be contracted out to a person or institution by the police jury, the cost being borne by the parish.[98] Juvenile clerks are required to submit semi-annual reports to the state board of charities and corrections as to the disposition of neglected or delinquent children, and upon the disapproval of the state board being shown in any one case, the governor is authorized to abrogate the contract.

The constitution provided that the legislature might create separate and distinct juvenile courts for parishes containing municipalities with populations of twenty-five thousand or more, and did provide for a separate juvenile court for

[93] *State v. Ebarbo*, 78 So. 978, 143 La. 591 (1918).
[94] In re Owen, *supra*.
[95] State v. Ragan, *supra*.
[96] *Brana v. Brana*, 71 So. 519, 139 La. 805 (1916).
[97] *Acts of La.*, 228 of 1920.
[98] *Ibid.*, 88 of E. S. 1921. Also see Daggett, H. S., *A Compilation of Louisiana Statutes Affecting Child Welfare.*

Orleans Parish.[99] Thus New Orleans has a juvenile judge elected for eight years at Congressional elections. He must be a qualified elector, forty years of age, and must have practiced law in the state for at least five years prior to his election. His salary is seven thousand dollars per year. A separate juvenile court has also been created for Caddo Parish. The judge must be a qualified elector and must have been admitted to the practice of law before the courts of the state. He is elected for a six year term and his salary is five thousand dollars per year. The jurisdictions of these two special courts, their powers, and their activities, are almost identical with those described above.

Two types of municipal courts, using population as a basis, are authorized by the constitution.[100] The object in view is to abolish justices of the peace within these areas and to create courts of mixed jurisdiction, all of that belonging to justices of the peace and part of the civil and criminal jurisdiction of district courts, thus doing away with the former and lightening the load of the latter. Because of the fact that many of the municipalities have special charters, and since it is often difficult to provide by general law for the peculiarities of various localities, the legislature has in most instances provided for these changes by means of special legislation. Nevertheless, it is still possible to generalize to a certain extent and to point out the characteristics of the two types.

In parish wards containing the parish seat, or containing cities with populations of five thousand or more, municipal courts may be created in the place of justices of the peace, with the same civil jurisdiction that is now vested in the latter, with criminal jurisdiction which may not extend to the trial of offenses punishable by imprisonment at hard labor under the state law,[101] and with jurisdiction over cases for the violation of both municipal and parish ordinances within their territorial areas, the parish wards in which they are situated. Municipal judges of this class may also hold preliminary hearings in cases not capital, they may require bonds to keep the peace, and they may perform marriage

[99] *Const. 1921*, art. 7, secs. 52 and 96; *Acts of La.*, 126 of E. S. 1921 as amended by *Ibid.*, 212 of 1924 and 6 of E. S. 1929. Also see *Ibid.*, 80 of 1924.
[100] *Ibid.*, sec. 51.
[101] *State v. Nejin*, 74 So. 108, 140 La. 798 (1917).

ceremonies. Appeals from these courts lie to the district courts.

All municipal judges are elected by the voters of their respective wards for six year terms at Congressional elections. They must possess the same qualifications as are required of justices of the peace. In general, a clerk is provided for each court, and keeps a docket of civil and criminal cases. The judge receives the same fees that are paid to justices of the peace in civil suits, and he receives a salary as compensation for his other duties, fixed by statute or by agreement between the police jury and the municipal governing authorities.[102]

Where the combined populations of a city and the parish ward or wards in which it is located total ten thousand or more, an additional civil jurisdiction may be conferred on the city courts of such municipalities. These courts are vested with a civil jurisdiction concurrent with the district court, in all cases where the amount involved does not exceed three hundred dollars exclusive of interest. Such courts have no jurisdiction in succession or probate matters; where a succession, the state, a parish, a municipality, or other political corporation is a party defendant; or where title to real estate is involved. They have criminal jurisdiction within their wards concurrent with the district court in all cases not punishable by imprisonment at hard labor; over all preliminary examinations not capital; and over all parish, municipal, and health ordinances. Prosecutions begin on affidavit, and misdemeanors are tried summarily and without juries.[103] They may require persons to make peace bonds, and they may perform marriage ceremonies.

In civil actions where the amount is less than one hundred dollars exclusive of interest, the pleading and practice may be similar to that before justices of the peace. In civil actions where the amount involved is more than one hundred dollars exclusive of interest, the courts are courts of record. In the former cases appeals lie to the district court, in the latter cases appeals lie to the courts of appeal. Appeals

[102] *Const. 1921*, art. 7, sec. 51; and *Acts of La.*, 272 of 1928 for the city court of Natchitoches; *Ibid.*, 157 of 1926, as amended by 10 of 1928 for the city court of Ruston; *Ibid.*, 137 of 1928 for the city court of Crowley; *Ibid.*, 276 of 1926 for the city court of Hammond; *Ibid.*, 18 of 1926 for the city court of Minden; and *Ibid.*, 126 and 128 of 1920, and 151 of 1928 for general minor provisions. Also see *Ibid.*, 40 of 1934, providing for a term of six years for municipal judges.

[103] *State v. Nejin*, 74 So. 103, 140 La. 793 (1917).

in all criminal suits lie to the district court except those reserved for direct appeal to the supreme court.

Judges usually must be practicing attorneys and electors of the ward in which their courts are located. They are elected for terms of six years in Congressional elections. Their compensation in civil cases consists of the fees allowed by the law to justices of the peace, and their compensation in all other matters are salaries fixed by statute or by agreement between the police jury and the municipal governing authorities. They appoint their own clerks. Fines and forfeitures sometimes go to the city entirely, sometimes they are divided between the city and parish, and sometimes they are deposited in local school funds.[104]

City judges of this class likewise appoint their own clerks in most instances, and the latter perform the clerical duties of the court and keep the dockets. The clerk may issue all processes in both civil and criminal matters within the jurisdiction of the court.[105]

In a few instances the legislature has alluded to city courts in municipalities with populations of fifteen thousand or more, but here again each of the cities has its own special legislation. It is sufficient to state here that the provisions concerning the judges, the jurisdiction of the courts, and their organization, are practically identical with those of cities of the class described above.[106]

There are two city courts for New Orleans, the first is on the left bank of the Mississippi River, the second is on the right bank.[107]

The first city court consists of three judges, a clerk, and a constable, popularly elected, the judges for eight years, the clerk and constable for four years. The judges receive five thousand dollars per year, the clerk receives twenty-four hundred dollars per year, and the constable the fees of his office.[108] The second city court consists of a judge, whose salary is five thousand dollars per year; a clerk, whose salary

[104] See *Acts of La.*, 14 of 1914 and 112 of 1922 for the city court of Bogalusa; and *Ibid.*, 101 of 1910, as amended through 1932 for the city court of Lafayette. Also see *Ibid.*, 40 of 1934, providing for a term of six years for municipal judges.

[105] *Ibid.*, 123 of 1928 and 82 of 1922.

[106] See *Ibid.*, 51 of 1902, as amended through 1928 for the city court of Lake Charles; *Ibid.*, 138 of 1898, as amended through 1924 for the city court of Monroe; and *Ibid.*, 103 of 1898, as amended through 1932 for the city court of Shreveport.

[107] *Const. 1921*, art. 7, secs. 90-92, as amended 1926 and 1928; *Acts of La.*, 45 of 1880 as amended by *Ibid.*, 22 of 1888, 125 of 1901, 195 of 1926, and 219 of 1932; *Carson v. Kober*, 6 La. App. 808 (1927).

[108] *Ibid.*, sec. 88.

is twenty-one hundred dollars per year; and a constable, whose compensation consists of the fees of his office. The judge, clerk, and constable of the second city court are all elected for terms of four years. Vacancies in the offices of clerk and constable are filled by the respective judges.[109]

Each court has the same jurisdiction within its own territory. They have exclusive original jurisdiction in civil suits where the amounts involved do not exceed one hundred dollars exclusive of interest, and concurrent jurisdiction with the civil district court in all suits where the amounts are between one hundred dollars and three hundred dollars exclusive of interest. The courts are courts of record and all pleadings must be in writing. They may issue necessary writs, perform marriages, and take testimony. All appeals are taken to the court of appeals, third circuit. The fees and costs of the court are regulated by the civil district court in behalf of the "Judicial Expense Fund."[110]

The state supreme court may interchange judges and clerks in cases of absence or recusation. The judges of the courts themselves may make temporary arrangements.

At least once each year all city court judges are required to sit en banc and enact uniform rules and regulations for the expedition of the work of their courts.

The functions of the municipal courts of the state were described in the beginning of this section. The city courts of New Orleans seem to be an exception to this rule, having only civil jurisdiction, but recorders' courts, to be described later, fill this petty jurisdictional gap in Orleans Parish. Have municipal courts fulfilled the purposes for which they were created? They have, but not to the extent that they are capable. Two recommendations for further change may be made.

In civil suits involving amounts of less than one hundred dollars exclusive of interest, appeals lie to the district court (except in New Orleans), and each case may be threshed out all over again. This certainly is not an aid to the district court. City court civil jurisdiction within this class should be final, and appeals of all civil suits involving amounts of not more than three hundred dollars exclusive of interest should not be allowed except after review of the records by the court

[109] *Ibid.*, sec. 98.
[110] *Acts of La.*, 186 of 1880 and 825 of 1926.

of appeals, not by the district court, with the right reserved to call up only such cases as are important enough to deserve appellate consideration. Such a change would be beneficial to the district courts and courts of appeals alike.

In the second place, the criminal jurisdiction of city courts should be final except where the district judge, after examining the record, decides to allow appeal to his court. With these two changes the purpose of city courts would be achieved to a far greater extent.

Petty Tribunals

There is always a place in any locality for a court of petty jurisdiction. Such courts relieve congestion in the general trial courts and they are presumed to speed up the administration of justice in petty disputes. The problem has, however, resolved itself into an attempt to secure competent jurists for these lesser tribunals, and to yoke up such courts with the general judiciary so that they become assets rather than liabilities. Justices of the peace, whose powers were really first broadened and put to real use by Henry VIII of England, were designed for rural, agricultural areas, where disputes were of a simple character and their solution depended more on the use of common sense by some qualified authority than upon a keen understanding of the law. But our modern civilization is a complex one, and petty tribunals adequate enough fifty or one hundred years ago, or even further back, are today only stumbling blocks in the march of judicial progress.

Any parish of the state (Orleans Parish excepted) may be divided into not more than six nor fewer than three justice of the peace wards by its police jury, from each of which there is one justice of the peace elected for a term of four years. The legislature may, however, reduce the number or even abolish the office throughout the entire state.[111]

Justices of the peace must be of good moral character and standing in their communities, freeholders, and qualified voters able to read and write English correctly.[112] After they have filed a certificate signed by the school authorities of their parishes showing that they possess the necessary quali-

[111] *Const. 1921*, art. 7, secs. 46-47.
[112] *Ibid.*, and *Acts of La.*, 155 of 1898.

fications, they are commissioned by the governor, and after qualifying and taking their oaths of office, they perform their duties until their successors are elected and qualified.[113] Justices of the peace receive fees as fixed by law in civil cases,[114] and graded salaries only in criminal and peace bond cases as are provided by police juries and paid by parishes.[115]

Justices of the peace are not judges in the sense that we use that term today.[116] They are more nearly judicial aids and judicial administrative officers. For this reason their jurisdiction, civil and criminal, is not final, regardless of how petty it may be, and they are always subject to the supervisory jurisdiction of the district court.

They have concurrent jurisdiction with district courts in civil suits where the amounts do not exceed one hundred dollars exclusive of interest, including suits for the possession or ownership of movable property not exceeding that amount in value, and of suits for landlords for the possession of leased premises, where the yearly or monthly rent does not exceed that amount.[117] They have no jurisdiction in succession or probate matters; where the state, a parish, a municipality, or other political corporation is a party defendant; or when title to real estate is involved. Justices of the peace are limited in their territorial jurisdiction to their own wards and to residents of those wards, except where: the defendant is a stranger, where one of a defendant group may be cited at his domicile in the ward, where a corporation commits a trespass or is responsible for an act culminating in an action for damages, or where there is no justice of the peace resident in the ward a justice from an adjoining ward may act.[118] The procedure of civil disputes before justices of the peace is outlined in the code of practice.[119] Justices of the peace exercise a limited power of issuing injunctions, they may perform the marriage ceremony, and issue executory processes.[120]

The criminal jurisdiction of justices of the peace extends to that of committing magistrates in cases not capital or neces-

[113] *R. S.*, sec. 2046; *Acts of La.*, 89 of 1904.
[114] *Acts of La.*, 208 of 1898, as amended by *Ibid.*, 155 of 1904 and 167 of 1928.
[115] *Const. 1921*, art. 7, sec. 50; *State v. Foster*, 88 So. 611, 109 La. 587 (1908); *Klees v. Police Jury*, 59 So. 247, 131 La. 263 (1912). In East Baton Rouge Parish justices of the peace receive one hundred dollars per year, payable semi-annually.
[116] *Andrews v. Soucier*, 13 La. Ann. 301 (1858).
[117] *Const. 1921*, art. 7, sec. 48; *Elster v. Picou*, 81 So. 710, 144 La. 1052 (1919).
[118] *Acts of La.*, 107 of 1926.
[119] See Dart, *Louisiana Code of Practice*, Pt. II, Title IV, Chapts. 1-7.
[120] *R. S.* secs. 2048-49.

sarily punishable at hard labor, to the bail or discharge in such cases, and to requiring bonds to keep the peace.[121] They also have jurisdiction over the violation of parish ordinances and village and town ordinances within their wards where the penalty to be imposed does not exceed one hundred dollars.[122] In cases where there are no coroners, or where they are absent or unable to act, justices of the peace may act for them in their respective wards.[123]

The state legislature has already indicated what will eventually happen to justices of the peace. As soon as the populations of municipalities and of parish wards in which they are situated reach the constitutional minimum, justices of the peace are abolished and city courts created in their stead with jurisdiction throughout their respective wards. Only one thing is lacking, the solution of the problem of courts of petty jurisdiction in areas not able to qualify under the constitutional provision as to population. This problem may be solved, however, through the power of the legislature to abolish justices of the peace throughout the entire state. Similar petty courts could then be created as have already been established in the areas with sufficient populations.

The petty tribunals of New Orleans (Orleans Parish) corresponding to justice of the peace courts, and having jurisdiction over all violations of municipal ordinances, are the recorders' courts.[124]

Judges of recorders' courts must be qualified voters of at least twenty-five years of age, residents of the city for at least two years, and they need not be licensed or practicing attorneys. There are four recorders' courts; three known as day courts, and one known as the night court.[125] The commission council is authorized to lay out the territorial districts of the courts, they appoint the judges, provide for their interchange or transfer, and fix the hours for holding court and the procedure to be followed. An assistant recorder acts for any of the other recorders when they are absent. The city provides for and pays the salaries of the judges and the expenses of their courts. Fines, forfeitures, and fees are paid into the city treasury.

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[121] *Const. 1921*, art. 7, sec. 48; *State v. Creel*, 94 So. 488, 152 La. 888 (1922); *State v. Read*, 113 So. 860, 164 La. 315 (1927).
[122] *R. S.* sec. 2053; *Parish v Bloch*, 13 So. 742, 45 La. Ann. 1090 (1893).
[123] *R. S.*, sec. 2056; *State v. Mackles*, 108 So. 410, 161 La. 187 (1925).
[124] *Const. 1921*, art. 7, sec. 94.
[125] *Acts of La.*, 159 of 1912, as amended by *Ibid.*, through 1926.

All prosecutions for the violation of municipal ordinances in New Orleans are tried in recorders' courts. The latter have no other jurisdiction.[126] Recorders may compel witnesses to appear and testify, punish for contempt in open court, and require bonds to keep the peace. They may parole, discharge, or release on bail all arrested persons over whom they have jurisdiction. Recorders' courts are not courts of record and pleadings may be oral.[127] In all appealable cases, however, testimony is taken verbatim as a record in case of appeal. A chief clerk is selected for each recorders' court by the commission council of the city, and necessary assistants and deputies are provided. The city board of police commissioners designates four city policemen to execute court orders and decrees and maintain order in the courts.

In villages and towns, where, of course, there is no municipal court, the mayor has concurrent jurisdiction with the justice of the peace over cases where municipal ordinances are violated.[127a]

Law Enforcement

The enforcement of state law has become an increasingly difficult object of achievement, so difficult in fact that the national government, several of the state governments, and a number of city governments have undertaken crime surveys in order to determine, if possible, some of the factors which contribute toward making crime a profitable and often a non-hazardous occupation.[128] According to the Wickersham Commission Report one of the most important factors contributing to the growth of crime is our cumbersome, ineffective convicting machinery. It is in this connection that a study of local government is significant, for too often the enforcement of state law is a responsibility shifted to the community.

The District Attorney

A few decades ago, the conviction of a criminal was a relatively simple task. He was arrested, evidence was collected and submitted to the grand jury, the indictment resulted, the

[126] *State v. Roy*, 91 So. 448, 150 La. 1030 (1922).

[127] *State v. Murphy*, 6 So. 816, 41 La. Ann. 526 (1889).

[127a] *Acts of La.*, 151 of 1928; *Maguire v. Hughes*, 18 La. Ann. 281 (1861); *Hommer v. Blackburn*, 27 La. Ann. 544 (1875). No judicial power may, however, be delegated to mayors.

[128] See *Report of the Wickersham Commission on the Observance and Enforcement of the Law, Illinois Crime Survey Report, Missouri Crime Survey*, and *Reports of Crime Surveys* made in Chicago, New York, Philadelphia and Cleveland.

trial was held, and the criminal convicted. In those days the burden of securing convictions rested with the arresting officials. Today the burden of securing convictions has shifted very largely to the prosecuting officials. The Illinois Crime Survey Report lists a number of instances where the failure to convict was traced to a faulty prosecution. For this reason the writer is treating the office of district attorney with other law enforcement officers.

A district attorney is elected for six years in each of the twenty-six judicial districts of the state.[129] Qualifications for office are residence in the district, state citizenship, and the practice of law in the state for at least three years prior to election.[130] Each district attorney receives a salary of two thousand five hundred dollars per year from the state and an additional compensation prescribed by the legislature payable by the parish or parishes composing the district.[131] They may receive no fees of any kind nor may they accept commissions.[132] Where vacancies exist with unexpired terms of less than one year, the governor fills them with senatorial confirmation. Where the unexpired terms are for more than a year the governor calls a special election to fill the vacancy.[133]

In the more populous judicial districts, district attorneys may appoint assistants to serve during their pleasure. Assistant district attorneys each receive seven hundred fifty dollars per year from the state and varying compensations set by act of the legislature from the parish or parishes making up their districts.[134] They must possess the same qualifications as do district attorneys.

District attorneys prosecute all criminal cases coming before their courts and they attend the sessions of their courts in each parish of the district; they represent the state in all civil and criminal matters and before city courts; they advise police juries and parish school boards; conduct inquiries where crimes or misdemeanors are committed; and report to the attorney general on all prosecutions and cases appealed.[135] All

[129] *Const. 1921*, art. 7, sec. 58.

[130] *Ibid.*, sec. 59.

[131] *Acts of La.*, 59 and 79 of 1924, and 13 of 1926. This additional compensation ranges from fifteen hundred to two thousand dollars.

[132] *State v. Henderson*, 45 So. 430, 120 La. 585 (1920). In a few instances they do receive fees by statutory order, however, as in East Baton Rouge Parish.

[133] *Const. 1921*, art. 7, sec. 69.

[134] *Ibid.*, secs. 60-62; *Acts of La.*, 99 and 267 of 1926, 19 and 87 of 1928, and 58 of 1930. The additional compensations under these acts range from one thousand fifty dollars to two thousand eight hundred fifty dollars.

[135] *R. S.*, sec. 1148; *Acts of La.*, 96 of 1880, 101 of 1884, 151 of 1904, 125 of 1912, and 221 of 1920; *State v. Chauvin*, 85 So. 645, 147 La. 708 (1920).

money collected as conviction fees is paid into the parish treasury.[136] District attorneys are prohibited from appearing, pleading, or in any way defending any criminal prosecution or charge involving a penalty or punishment for violating any law or ordinance in the state.[137]

The district attorney of Orleans Parish (New Orleans) is elected for a four year term and receives ten thousand dollars per year.[138] He appoints assistant district attorneys to serve at his pleasure. His duties and functions are much the same as those of other district attorneys.

One of the outstanding additions to the Constitution of 1921 was the creation of a state department of justice headed by the elected attorney general, and the provision that the attorney general and his assistants shall exercise supervision over the several district attorneys throughout the state.[139] Under this provision it is possible for the attorney general, through the reports which must be submitted to him by district attorneys, to determine whether suits to which the state is a party are progressing as they should, and if in his opinion they are not, he may take complete charge of any case until its final adjudication. This provision could be of particular benefit in criminal prosecutions, and the whole power of the state could be thrown into the case. There is thus room for development in this line even though little has been accomplished to date.[140]

If the attorney general were appointed by the governor, the supervisory power granted to the former over district attorneys by the constitution, if used as it should be used, would be adequate in securing the type of legal service required by the state. It would not then be so necessary to urge the appointment of district attorneys. Otherwise, district attorneys should be appointed by the governor.

The Sheriff

The sheriff in Louisiana really has three major functions to perform. First, he is the local law enforcing authority for both state and local laws, ordinances, and regulations. Second,

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136 *Const. 1921*, art. 7, sec. 64; *Acts of La.*, 96 of 1880.
137 *Ibid.*, sec. 68.
138 *Acts of La.*, 66 of 1926.
139 *Const. 1921*, art. 7, sec. 55.
140 As far as the writer has been able to ascertain, the attorney general has taken complete charge of cases arising in New Orleans courts only, and then only to enter a nolle prosequi in each case or to take over cases nominally begun by the local prosecuting officers.

he is an officer of the courts, serving their writs and orders and carrying out their judgments. Finally, he is the state and local tax collector within his parish. It is with his first two functions that this section deals.

A sheriff is popularly elected for each parish for four years at the general state elections.[141] Before receiving their commissions of office sheriffs must each give bond for six thousand dollars for their duties as sheriff. Where the unexpired term in office is less than one year, the governor fills the office by appointment. Where the term is for more than one year, a special election is held to fill the vacancy.

The salaries of sheriffs are provided by the legislature and range from two thousand to six thousand dollars per year as compensation for all duties.[142] The state pays a part, in the form of a per cent of the state taxes collected; each parish is allowed one thousand dollars for its representative in the state legislature and five hundred dollars for each additional member; parishes, special districts, and other local areas pay fees for the collection of their taxes; and all such collections, civil and criminal fees, and other charges, are turned into what are known as the "Sheriff's Salary Fund." An expense allowance of from one thousand to thirty-eight thousand dollars per year is also made for each parish, and together with all salaries, constitutes the total expenditures made from the funds.[143] Surpluses, if any, remain in the parish treasury. Monthly deficits may be made up by temporary advances by police juries of not more than seventy-five per cent of anticipated revenues for the month, but under no circumstances may the total annual expenditures exceed the total annual "Salary Fund." These funds are under the supervision of the state supervisor of public accounts.

As executive officers of the courts, sheriffs or their deputies perform a number of varying functions and duties. They attend every session of court held in the parish, administer oaths, serve subpoenas, make sales, and serve writs and orders.[144] In these cases they act throughout the state. When seizing goods as a result of court orders, they must give bond for the value of the goods seized. For performing the minis-

[141] *Const. 1921*, art. 7, secs. 65 and 69; *Acts of La.*, 52 of 1880; *State v. LeBourgeois*, 12 So. 360, 45 La. Ann. 249 (1893).

[142] *Acts of La.*, 156 of 1920, as amended by *Ibid.*, 349 of 1926 and 84 of 1932.

[143] *Ibid.*, 156 of 1920, 86 of 1924 and 88 of 1932; *Police Jury v. Heflin*, 105 So. 877, 159 La. 875 (1925).

[144] *R. S.*, secs. 3541 and 3579; *Acts of La.*, 87 of 1882 and 81 of 1916.

terial acts of the courts fees in each particular instance are charged against the cases and after collection are turned into the fund described above.[145] As peace officers and law enforcing authorities sheriffs or their deputies enforce the laws of the state and the ordinances of their parishes, serve warrants, and make arrests.[146] They may appoint additional deputies with the consent of the judge of the district court and the president of the police jury, and on their own discretion in cases of emergency, the salaries to be paid out of their "Salary Funds."[147] In case of a dispute between the district judge and the president of the police jury over the appointment of additional deputies, the supervisor of public accounts settles the controversy.[148] When petitioned by six citizens a sheriff may appoint a deputy for any unincorporated urban area.[149] Parish traffic officers may also be selected by sheriffs when authorized by their police juries.[150] In cases of riot and emergency the sheriff may call for the aid and command the services of every able-bodied inhabitant of the parish to preserve peace or to execute court orders where resistance is made or is threatened.[151] He is keeper of the public jail, and provides food for the prisoners, subject to regulation by the police jury.[152] After two years have elapsed from the date of an act or the omission of an act, a sheriff is free from any liability resulting from performing an illegal or unauthorized act or refusing to perform a mandatory act.[153]

The various duties that have been delegated to the sheriff have really made of him a sort of chief clerk. His activities are so many that it is physically impossible for him to perform them in person. In general, it will be found that a chief deputy, with the assistance of other deputies, takes charge of the duties of the sheriff as officer of the courts. Another chief deputy, with the assistance of additional deputies, takes charge of the peace duties and law enforcing functions of the sheriff. This leaves the sheriff free for his tax collection duties and enables him to supervise his other two functions.

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145 *Acts of La.*, 208 of 1898 and 167 of 1928.
146 *R. S.*, sec. 3541.
147 *Ibid.*, sec. 3542 and *Acts of La.*, 156 of 1920 and 86 of 1924; *State v. Titus*, 95 So. 106, 152 La. 1011 (1922). But *Acts of La.*, 27 of E. S. (3rd) 1934, apparently repeals this provision by authorizing the Superintendent of the Bureau of Criminal Identification and Investigation to approve the appointment of deputy sheriffs.
148 *Police Jury v. Heflin*, 105 So. 877, 159 La. 875 (1925).
149 *Acts of La.*, 27 of 1902.
150 *Ibid.*, 260 of 1926.
151 *R. S.*, sec. 3544.
152 *Ibid.*, sec. 3541; *Acts of La.*, 208 of 1920 and 336 of 1926.
153 *R. S.*, 3546; *Succession of McCloskey*, 32 La. Ann. 146 (1880).

Seldom, however, is the sheriff a trained accountant, so he must therefore rely on a third chief deputy to assume control of his fiscal activities.

The criticism of this system is obvious, and, in a way, the present arrangement in New Orleans points to a possible solution of the problem. As suggested in another chapter of this study, the tax-collecting function of the sheriff should be entrusted to the parish treasurer, who is usually more competent and much better qualified from the point of view of financial knowledge and experience. The sheriff should then act merely as an officer of the court and as an enforcing officer of local ordinances and regulations, leaving the actual enforcement of state law to a state police system patterned after those of Pennsylvania, New York, Massachusetts, or Texas. The sheriff would thus become a local law enforcing officer only. In this connection the governor should be authorized to remove for cause any sheriff in the state, after notice and a hearing. Insofar as the sheriff's activities as an officer of the courts are concerned, he would be held responsible by the courts themselves through their power to cite him for contempt. The fee system as practiced today should be abolished, as far as is practicable, with the sheriff and his deputies paid salaries by their parishes.

The Coroner

The office of coroner is another one of England's older local offices which the American states have inherited. A product of the past, the coroner has degenerated today into a purely ministerial officer, whose duties might better be performed by the parish health officer or the parish physician. The duplication is entirely unnecessary.

A coroner is elected for four years in each parish.[154] He must be a regularly licensed physician, except in parishes where there is no physician who will accept the office. The coroner is also ex officio parish physician. As coroner, he receives his entire compensation in the form of fees which are charged against the state, parish, city, town, or village as the

[154] *Const. 1921*, art. 7, secs. 70-72.

case may be.[155] Vacancies in the office of coroner are filled by the governor for the unexpired terms.

Coroners are conservators of the peace, they investigate deaths and hold inquests, and may hold or detain witnesses in death cases.[156] Whenever the duties of his office make it necessary, he may appoint a deputy to aid him.

The coroner's jury consists of five persons residing in the parish, and they are required to examine into the cause and determine how persons came to their deaths. Jurors take an oath, hear witnesses, see that the testimony is reduced to writing, give their verdict, and swear to it.[157]

Whenever the sheriff is an interested party, or whenever there is a vacancy in his office, the coroner acts in his place until the vacancy is filled. The coroner may not, however, perform the duties of a tax collector.[158]

In a number of the parishes the coroner acts as a parish health officer, and in this connection he receives a salary for performing the duties of that office, as set by the police jury.[159] The office of coroner and ex officio parish physician and the office of parish health officer may, however, be entirely separate.

The coroner of Orleans Parish (New Orleans) is elected for four years, and he receives a yearly salary of six thousand dollars.[160] He inspects penal institutions, holds autopsies and conducts post mortem examinations, holds inquests, and examines all cases of alleged insanity.

The coroner, as a combined peace and medical officer, is no longer needed. A recent state-wide health movement has inaugurated the parish health unit system, and parishes are employing full time parish health officers and personnel on a salaried basis. The office of coroner could thus be abolished, his medical duties delegated to the parish health officer, and his peace duties assigned to the sheriff.

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[155] He receives ten dollars for each inquest, twenty dollars for each burial at his expense, ten dollars each for viewing bodies and making investigations and reports, twenty-five dollars for each autopsy, ten dollars per day for testifying in court, ten dollars each for mental examinations and interdiction papers, and a fee for each mental or physical examination made by him at the request of the district attorney. In addition, he ordinarily receives a monthly compensation from the parish for attending persons in jail. *Acts of La.*, 241 of 1926.

[156] *R. S.*, secs. 651-667; *Acts of La.*, 226 of 1916; *State v. McNeill*, 33 La. Ann. 1282 (1881).

[157] *Ibid.*, secs. 657-670; *Acts of La.*, 169 of 1910.

[158] *Const. 1921*, art. 7, sec. 71.

[159] *Acts of La.*, 241 of 1926.

[160] *Const. 1921*, art. 7, sec. 88; *Acts of La.*, 84 of 1926 and 14 of 1930.

The Constable

The constable in Louisiana is not, strictly speaking, an enforcement officer, but is the officer of the justice of the peace court. Of all present local officers he is probably the least necessary. In New Orleans his duties could well be performed by a designated member of the city police force. A deputy sheriff could perform his duties in the parishes and still have time for other activities. By abolishing the fees, and by having the duties of the office performed by a salaried official, at least one phase of local government would be raised to a much higher plane.

For each justice of the peace court in each parish a constable is elected for four years.[161] Constables must be qualified voters and residents of the ward elected from, of good moral character, and able to read and write English. They take an oath of office and give bond of five hundred dollars for the faithful performance of their duties.

They act as conservators of the peace, make sales, serve and return writs, appraise and sell property seized for debt, and in doing so may act throughout the parish.[162] Constables receive regular fees for their duties in civil cases, and salaries in criminal cases as are provided by their police juries.[163]

Municipal Police

The subject of municipal police in Louisiana is a difficult one, for ordinarily the police officers of each municipality are provided for by special legislation. It is possible, however, to generalize sufficiently and to point out the salient features of municipal police organization and functions.

All municipalities with populations of approximately fifteen thousand or less have a constable or marshal as officer of the city court and as the enforcing officer of city ordinances and ward regulations.[164] He is elected for a term of four years. In some municipalities his compensation consists of the civil and criminal fees of his office, in others he receives all civil fees but is paid a salary by the city and par-

[161] *Const. 1921*, art. 7, sec. 49; *R. S.*, sec. 682.

[162] *R. S.*, secs. 638-41; *State v. Woodard*, 81 So. 887, 144 La. 845 (1919); *State v. Boitreaux*, 31 La. Ann. 188 (1879).

[163] *Acts of La.*, 208 of 1898, and see *Budget for East Baton Rouge Parish.*

[164] See *Acts of La.*, 14 of 1914 for Bogalusa; *Ibid.*, 191 of 1910 for Lafayette; *Ibid.*, 284 of 1918 for Hammond, as amended by 276 of 1928; *Ibid.*, 157 of 1926 for Ruston. See also *Ibid.*, 22 of E. S. (2nd) 1934, creating a State Civil Service Commission with supervision and control over all municipal police systems in the state.

ish for his criminal duties, and in still others he receives a flat salary, divided between the parish and the city, for both civil and criminal duties. Where salaries are paid, either for full or part compensation, they range from five hundred to twenty-four hundred dollars per year.

Cities with populations of approximately fifteen thousand or more, Baton Rouge and Shreveport for example, have full time police forces. Cities within this class usually have the commission form of government, and the commissioner of public health and safety has charge of police activities within the city.[165] Instead of marshals or constables they have regular police forces, consisting of a chief, sergeants, clerks, patrolmen, and a plain clothes group. Salaries range from twelve hundred to three thousand dollars per year, and ordinarily provision is made for retirement and pension systems.[166] Police forces of this type are primarily interested in enforcing local traffic regulations, municipal ordinances, and such parish ordinances as affect the city. They may be called upon to aid the sheriff but seldom do.

In New Orleans (Orleans Parish) all law enforcement is by the municipal police organization.[167] A police board, composed of the mayor, the commissioner of public safety, and three resident citizen taxpayers appointed by the mayor and council, have general supervision over the police force. The members of the board receive no salaries. The police board purchases all the supplies, materials and equipment used by the department, and has charge of all departmental funds. It determines the number of police employees, creates grades and classes, and fixes their salaries. The mayor may assume complete control of the force in cases of emergency.

The superintendent of police, under the commissioner of public safety, has charge of the whole police force. The police board is required to investigate all charges preferred against him, and it may remove him for causes preferred by the ma-

[165] See *Ibid.*, 103 of 1898, as amended by *Ibid.*, 29 of 1900, 109 of 1920, 28 and 110 of E. S. 1921, and 229 of 1932.

[166] *Ibid.*, 290 of 1914, 10 of 1922, and 29 of 1926. Also see *Ibid.*, 87 and 147 of 1934, for permissible police pension systems.

[167] *Acts of La.*, 159 of 1912, as amended by *Ibid.*, 79 of 1920, 187 of 1924, 179 of 1928, and 240 of 1932. Also see *Ibid.*, 104 of 1934, creating a police board consisting of seven members named, one each, by the Young Men's Business Club, the New Orleans Athletic Club, the New Orleans Association of Commerce, Loyola University, Tulane University, the Property Owners' Association, and the Central Trades and Labor Council. At the time of this writing the act in question is before the courts on the basis of unconstitutionality. It is also interesting to note *Ibid.*, 7 of E. S. 1934, prohibiting the appointment of special officers or police in New Orleans to carry arms without the consent of the governor.

yor. The force is divided into the three platoon system, each on duty for eight hours out of every twenty-four hours, except in cases of emergency.

While the New Orleans police force has no real civil service method of rating or civil service rules, promotion is made from within the ranks, and a scale of grades has been adopted ranging from supernumerary patrolman up to the superintendent of police. No member of the force may be removed except after a hearing preferred on written charges, with time to prepare a defense, and with the right to confront and question the witnesses. The three appointed members of the police board constitute a board of appeals, and must pass in a final way on all removals.

A police pension fund, on the participating basis, has been provided under the direction of a board of trustees composed of the superintendent of police, the secretary of the police board, the commissioner of finance, and five members from the active and retired ranks selected by the members of the force. The board of trustees provides for the assessment of members of the police force and for the investment of the funds.

The State Police

In 1928 the state legislature created a state highway police under the direction of a superintendent selected by and responsible to the highway commission.[168] It was originally supposed to enforce state highway, auto, and motor truck regulations. With the enactment of legislation levying high taxes on tobacco, malt, and gasoline, however, the highway police began to be used more as a state police to prevent the smuggling and sale of these commodities in evading the taxes.

This development shows a distinct tendency in the direction of a state police force for the enforcement of state law, doing away with the necessity of depending upon local officers. This tendency is to be commended, and as soon as the state has a well organized and dependable police force state law will be enforced and respected. In this respect local forces would become auxiliary to the state organization.

So much has been accomplished in the various states in this direction, and so much of it has been described by others,

[168] See *Reports of the State Highway Commission*, 1928-32, for a description of its organization and duties.

that it is not necessary here to point out the advantages of a non-political state police with full authority to enforce at all times the law of the state.[169]

The Jury System

The Constitution of Louisiana does not guarantee a trial by jury in all civil and criminal cases, even when both parties to a suit, civil or criminal, may desire one.

In civil cases a jury trial may be demanded by either party, after posting a bond as a guarantee of the costs of the suit if the case is lost, in all suits except those on notes, bills of exchange, or other unconditional obligations to pay a specific sum of money.[170] Nine jurors out of the twelve may bring in a verdict. Each party to the dispute is allowed six peremptory challenges, and there is no limit to the number of challenges for cause.

The provision for juries in criminal cases is rather complex, but it has simplified alike the task of prosecution and of defense.[171] All cases in which the punishment may not be at hard labor are tried by the judge without a jury. District judges may also try misdemeanors at any time; and they may try all cases not capital or necessarily punishable at hard labor, when the jury is waived by the defendant.[172] Otherwise a jury of five is used, all of whom must concur to return a verdict.[173] Cases in which the punishment is necessarily at hard labor are tried by a jury of twelve, nine of whom must return a verdict. Cases in which the punishment may be capital must be tried by a jury of twelve, all of whom must concur to render a verdict.[174] Jury trials in such cases cannot be waived. Neither may the district judge receive a plea of guilty in capital cases.

At first glance these provisions may seem rather hard from the point of view of the accused. He has, however, certain rights which protect him to the fullest extent. For instance, if accused of a crime necessarily punishable at hard

[169] See Conover, M., "State Police," *Am. Pol. Sci. Rev.*, Feb., 1921; Smith, B., *The State Police; Missouri Crime Survey*, p. 71. Also see *Acts of La.*, 9 of E. S. 1934, authorizing the appointment of as many officers and agents as may be necessary in the State Bureau of Criminal Identification and Investigation, authorizing them to make arrests throughout the state, and, in effect, creating a state police force.

[170] *Acts of La.*, 185 of 1898; Dart, *Louisiana Code of Practice*, under title of juries.

[171] *Const. 1921*, art. 7, secs. 41-42.

[172] *State v. Beebe*, 58 So. 780, 127 La. 498 (1910).

[173] *State v. Fuller*, 114 So. 606, 164 La. 718 (1927).

[174] *State v. Nelson*, 57 So. 1003, 130 La. 856 (1912).

labor he cannot waive trial by jury and insist upon being tried by the judge alone.[175] Again, where the crime demands a trial by twelve jurors but a verdict of nine may convict, the defendant is entitled to the full number of jurors, twelve.[176] In addition, in criminal cases, the accused has twelve peremptory challenges and the state has twelve. There is no limit on the accused or on the state to challenges for cause. Finally, although the judge instructs the jury as to what the law is on a particular subject, the jury is judge of both the law and the facts. On the other hand, however, the state supreme court, to which all criminal appeals lie, may reverse the judgment of the lower court where flagrant disregard for the meaning of the law by the jury is apparent. In most cases of this nature the trial judge may also grant a new trial.

Prosecutions in Louisiana may be by indictment, information, or by affidavit,[177] but no person may be held to answer for a capital crime except on a presentment of indictment by a grand jury. This latter is not necessary, however, in cases arising in the militia when in actual service in time of war or public danger.

A grand jury of twelve, nine of whom constitute a quorum and must concur to find an indictment, are empanelled in each parish twice a year, and remain in office until a succeeding grand jury has been selected.[178] In Cameron Parish only one grand jury is called each year. All proceedings of the grand jury are secret. Only the evidence against an accused person is heard, for the grand jury has to determine only whether there is sufficient evidence to warrant bringing the accused to trial. Evidence may be collected by the grand jury, but ordinarily this is left to the district attorney, and his recommendations carry considerable weight with the grand jury findings.

Jury service in Louisiana is predicated entirely upon state citizenship, and usually a list of prospective jurors is made up from the parish registration rolls.[179] Women are exempt from jury service unless they have expressly indicated their desire to serve as jurors.

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[175] *State v. Thompson*, 28 So. 882, 104 La. 167 (1900).
[176] *State v. Ned*, 30 So. 126, 105 La. 696 (1901).
[177] *Const 1921*, art. 1, sec. 9 and art. 7, sec. 42; Dart, *Code of Criminal Procedure*.
[178] *State v. Joseph*, 78 So. 668, 143 La. 428 (1918).
[179] *Const. 1921*, art. 7, sec. 41; *State v. Jackson*, 96 So. 58, 153 La. 517 (1923); *State v. Bray*, 95 So. 417, 153 La. 103 (1923); *State v. Dreher*, 118 So. 85, 166 La. 924 (1928).

A juror must be a citizen of the state and of the United States, a bona fide resident of the parish for one year, not under interdiction or charged with any crime or offense, nor convicted at any time of a crime or offense punishable by hard labor unless expressly pardoned. He must be a competent, intelligent person of full age, and no distinction may be made on account of race, color, or previous condition. Judges of district courts may also decide upon the competency of jurors in cases of physical condition, relationship, or ignorance of English. In addition to the above qualifications a grand juror must be able to read and write English and be a person of good character and standing in his community.[180]

Those exempt from jury service include all United States, state, and local officers while in their official capacities, professional men and employees of local utilities, previous petit and grand jurors (within the year), and all persons over sixty years of age, or those who are sick or incapacitated.[181] These are personal exemptions only, and if not claimed may not act as a basis for challenges.

For the selection of jurors district judges appoint five citizens who, with the clerk of the court, constitute the jury commission and hold office during the pleasure of the district judge. The jury commission first selects three hundred names of qualified citizens and from this group is selected the Grand Jury List. Separate groups are also drawn for trial jury service each week during the term of court. Sealed envelopes containing the jury lists are then placed in the Jury Box, and given to the clerk to be used during the term, subject to the directions of the judge. Records and lists of the drawings are kept by the clerk and the necessary names are given to the sheriff for summons to jury service. The jury commissioners also select a list of Tales Jurors of one hundred names for use when the regular venire is exhausted. Jury lists are reconstructed at least twice each year.[182] Jury commissioners receive three dollars per day and five cents per mile traveling expenses. Jurors receive four dollars per day and mileage of five cents per mile.

District judges may enforce jury service by fines of not more than fifty dollars or imprisonment for not more than

[180] *Acts of La.*, 185 of 1898.
[181] *Ibid.*, and 184 of 1926.
[182] *Ibid.*, 185 of 1898, 11 of 1902, 58 of 1904, 118 of 1912, 182 of 1914, 122 of 1916, 118 of 1918, 178 of 1920.

three days or both. Clerks of court issue certificates of attendance to the jurors and the witnesses.[183]

In New Orleans the jury commissioners are selected by the governor and confirmed by the state senate.[184] The commissioners draw the names of jurors in the presence of the civil and criminal sheriffs, and the latter take charge of the lists and issue summons to the jurors.[185]

Conclusion

A consideration of recent reorganization surveys of state governments reveals three rather important features.

In the first place, many of them recommend far reaching constitutional changes insofar as judicial organization is concerned. Secondly, they recommend changes in procedure and in policy of a character that would do much to repeal or amend the settled jurisprudence and custom of the states in question.[186] In the third place, the suggested changes contained in many of these surveys seem to be of a stereotyped character, failing to take into account the fact that our states are not fundamentally similar and that what may be necessary in one state is not necessary in all states.

There is little question but that these recommendations are in many cases of a necessary character, and if realized would go far in creating state judicial systems perhaps far superior to those already in existence. But the men making these surveys fail to go beyond the constitutions, the statutes, and the codes of the states. They fail to take into consideration the ideals and customs of the electorates on whom depend the success or failure of any plan of reorganization. It is submitted that these factors are as important in considering the general subject of governmental reorganization as are the established and so-called accepted principles which survey groups are trying so hard to popularize. The writer is not of the opinion that many of these changes are not necessary. They are. But no electorate will accept such far reaching suggestions merely on the recommendation of a survey group. Constitutions and jurisprudence are the products of customs and of a political philosophy that are not of recent formation,

[183] *Ibid.*, 87 of 1890.
[184] *State v. Pierre*, 46 So. 574, 121 La. 465 (1908).
[185] *Acts of La.*, 237 of 1928.
[186] See, for instance, the *Surveys* made by the Brookings Institution in Mississippi, Alabama, and in New Hampshire.

and the idea that such institutions as have been created are to be abolished or changed almost beyond recognition will not be readily accepted by a people who have been accustomed to the popular control of their state judicial systems.[187]

A study of the constitutions of Louisiana reveals two important considerations in connection with the state judiciary. It is possible to trace from the very beginning the popular attempt to secure the selection of all judges by the voters of the state. This statement is based upon the changes made in the judiciary articles of the constitutions of 1852, 1913, and 1921. Terms in office, long or short, made no difference to the layman. He demanded the right to vote for his judges and he secured that right. In the second place, the judiciary of Louisiana is not altogether removed from the policy determining field. Above all it attempts to secure the supremacy and the continuity of the provisions of the constitution, literally and in spirit. But suppose a new constitution contains provisions of a doubtful popular acceptance and of a distinctly different character than those of the preceding constitution. The supreme court has not hesitated in such a case to declare that constitutional provisions of this character are null and void.[188]

In the light of these revelations, to advocate an appointed judiciary with life tenure or long terms subject to running against the record established, would be but an idle gesture and of no particular value. The writer is not of the opinion that this should not be the ultimate goal, but it is questionable if a recommendation of this character would receive any very enthusiastic consideration.[189]

At present district judges are popularly elected for six year terms, appellate judges for twelve year terms, and supreme court judges for fourteen year terms. A study of the rosters of judges, in the Annual Reports of the Secretary of State, shows that judges are generally reelected. In the case of the reelection of supreme court judges and of appellate judges the practical result is life tenure. And, in effect, these judges do run against their records. The same benefit could well be secured to district judges by increasing their terms in office to ten years.

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[187] Myers, W. S., *The American Government of Today*. pp. 482 ff.
[188] See Miller, *op. cit.*, pp. 82 ff.
[189] *Ibid.*, pp. 90-100.

Insofar as a unified and centralized judicial system is concerned, the supervisory authority of the state supreme court over inferior courts is granted by the constitution. It remains only to be used.

The question of judicial procedure is not so easily solved. Practicing attorneys well know that the statutes of most states, and of Louisiana in particular, are cluttered with legislative acts rigidly providing the procedure of suits, from their inception to their conclusion. The administration of justice is thus hampered as much by having the hands of the judiciary tied as by any other factor. It is strongly urged that both theory and fact demonstrate the wisdom of vesting "rule making power" in a judicial organ, either the supreme court or a judicial council.[190]

Criticisms and suggestions, other than those immediately considered, have been made throughout the body of this chapter. The Louisiana judiciary and the methods employed of enforcing the law are far from perfect, but the inclusion of necessary provisions that are rapidly becoming apparent to the citizens of the state will, in time, create a new and more satisfactory system of administering justice in the state.

CHAPTER XI

Suffrage, Offices, and Elections

A note from an 1877 decision of the state supreme court aptly describes the political philosophy back of the election laws of Louisiana.[1]

> "The object of all laws regulating elections under our system, is to secure the great end of carrying out the popular will; and courts of justice will interpret them so as to secure and not to defeat that end."

The history of Louisiana is replete with manifestations of this doctrine. The constitutions of 1845, 1852, and 1898, were direct results of popular demands for a more democratic control of the officers as well as of the organs of government. One might admit that the oft quoted statement, "the cure for the evils of democracy is still more democracy," is true insofar as Louisiana is concerned, for demand after demand for more

[190] *Ibid.*, pp. 116-118.
[1] *Webre v. Wilton*, 29 La. Ann. 610 (1877).

popular control of government eventually culminated in putting practically all state and local officers on an elective basis.

But from 1877 to the present, there has been coupled with this an equally important demand on the part of the Louisiana electorate that white supremacy be maintained in nominations, in elections, and in the occupancy of public office. A slave state until after the Civil War, Louisiana experienced a brief but tragic period of "carpet-bag" domination and government based upon the support of an almost solid negro vote.

To the average citizen of Louisiana, then, the only safeguard against the return of such a situation is the elimination of the negro voter by legal or by extra-legal methods. If the political observer constantly keeps these two factors in mind, the system of suffrage and elections in Louisiana and the peculiar hierarchical arrangement of party organization will take on a new and richer significance.

As each new constitution was adopted, particularly those of 1898, 1913, and 1921, more and more minute detail as to suffrage qualifications and election procedure was included, until today, statutes regulating these two subjects are almost entire reproductions of the constitutional provisions governing them. On the other hand, the subject of nominations is almost entirely a legislative product, subject to immediate change by the legislature in special session, if necessary; and in keeping with the same tendency found in other southern states, great potential power is found to exist in the organs of party government so as to safeguard the party from external as well as from internal aggression. In this last respect, party organization in Louisiana is far from being popularly directed, but this question evidently has been considered more from the point of view of expediency than from that of policy.

Suffrage, Qualifications

Every citizen of the state and of the United States, native born or naturalized, not less than twenty-one years of age, and possessing the following qualifications, is an elector, and is entitled to vote in any popular election in the state.[2]

[2] *Const. 1921*, art. 8, secs. 1-2; *Acts of La.*, 122 of E. S. 1921. The common-law rule of majority does not prevail in Louisiana. The civil code provides that minors are persons who have not as yet obtained the age of twenty-one years complete, and the age is determined as of the day preceding the election. *State v. Joyce*, 49 and 54 So. 221 and 934, 128 and 138 La. 687 and 488 (1909 and 1911).

He (she) must have been an actual bona fide resident of the state for two years, of the parish for one year, of the municipality in municipal elections for four months, and of the precinct in which he offers to vote three months next preceding the election.[3] When moving from one parish to another, however, voters retain their residence in the first parish for electing district and state officers until they acquire it in the other parish, and when moving from one precinct to another in the same parish voters retain the right to vote in the former precinct for three months.[4]

Applicants for registration must be of good character and they must understand the duties and obligations of citizenship under a republican form of government. A previous fine or sentence for the commission of a misdemeanor, a minor crime, or a felony, would seem to act as a basis for the disfranchisement of the voter, demonstrating his lack of a good character; but the discretion of the registering official may be of considerable importance in determining just what are the duties and obligations of citizenship under a republican form of government.

The applicant must be able to read and write, and has to demonstrate his ability to do so when he applies to register by making, under oath, a written application in the English language or in his mother tongue. The application contains the essential facts necessary to show that he is entitled to register and vote, and must be entirely written, dated, and signed without assistance by any person or from any memorandum.[5] The applicant must also be able to read any clause in the constitution of the state or in the Constitution of the United States, and give a reasonable interpretation of its contents. If he is not able to read and write, a prospective voter may be allowed to register and vote if he is attached to the principles of the state constitution and of the Constitution of the United States, if he is able to understand and give a reasonable interpretation of any section of either constitution when read to him by the registrar, and if he is well disposed to the good order and happiness of the State of Louisiana and of the United States. The discretion of the registering offi-

[3] *State v. Joyce* (above note); *Tullos v. Lane*, 12 So. 508, 45 La. Ann. 888 (1893). The term residence does not mean domicile, but the abode in which a person actually lives or works.

[4] *State v. Montgomery*, 71 So. 768, 139 La. 465 (1916).

[5] *Bishop v. Shurburne*, 47 So. 759, 122 La. 439 (1908).

cial in determining this qualification, that of understanding and of interpreting provisions of either of the two constitutions, may, and no doubt does, operate to enfranchise white illiterates and to disfranchise colored illiterates and literates.[6]

No person less than sixty years of age is entitled to vote in any election who has not, in addition to fulfilling the above qualifications, signed his name in the annual poll book register, kept by the sheriff of each parish, on or before December 31st of each year, for two years preceding the year in which he offers to vote.[6a] Not only must this qualification be satisfied when registering, but the prospective voter must, when called upon to do so, exhibit his poll book register receipts for two years before being allowed to vote. In every case the polling officials may demand to see the receipts before allowing the persons in question to vote in primaries, elections, or special bond or tax elections. Individuals may sometimes lose their poll book receipts, and in such cases the discretion of the registering official largely determines the granting of duplicate receipts.

Each voter must be legally enrolled on his own application at the time he offers to vote[7], and must be able to establish his identity when registering or voting. It will be noted here, that registration is an entirely voluntary action on the part of the would-be voter. If he does not register on his own initiative, he may not vote in subsequent elections. In case a person possesses the necessary qualifications and yet is denied registration, he may apply to the district court for relief. A trial by a jury of twelve is held, nine of whom must concur to return a verdict. The verdict is final, with no appeal, and no new trial may be held. On the other hand, a qualified voter may apply to his district court to have illegally placed names struck off the registration rolls. A jury trial is likewise held, nine of the twelve concurring to return a verdict. Appeal is allowed to the court of appeal only, and then on legal questions, its decision being final.

There are, then, seven necessary qualifications which must be complied with before a person may vote in any election in the state. They are: citizenship, age, residence, good character and reputation, literacy or education, poll book certifi-

[6] *Williams v. Miss.*, 170 U. S. 213 (1898).
[6a] *Acts of La.*, 230 of 1934, a constitutional amendment.
[7] *Bishop v. Sherburne*, 47 So. 759, 122 La. 429 (1908).

cates, and registration; and failure to qualify under any one of them, disqualifies the voter altogether.

Disqualifications

In addition to disqualification when unable to satisfy the above requirements, prospective voters are not permitted to register, hold office or an appointment in the state, or vote, if they fall under any one of the following classes.

Persons convicted of any crime punishable by imprisonment in the state penitentiary and not afterward pardoned with the express restoration of the franchise;[8] those who are inmates of any charitable institution, Soldiers' Home excepted; those actually confined in any public prison; all interdicted persons (under guardians), and all persons notoriously insane or idiotic, whether interdicted or not,[9] are expressly prohibited from registering, voting, or holding office.[10]

In enforcing these disqualifications, the registrar of voters of each parish is required to remove from the registration roll, if already registered; the names of people whose death or insanity is legally established, the names of people in charitable institutions (on information by the executive officers of such institutions), and the names of people convicted of felonies or against whom judgments have been returned directing cancellation (on written information by the presiding judge of the court or by the district clerk). In connection with these cancellations, all district judges, district clerks, and all heads of charitable and penal institutions, are required to report this information each month to the registrar of voters of the parish concerned.[11]

Registration

A registrar of voters is appointed by the police jury of each parish to hold office during the pleasure of the state board of registration, composed of the governor, the lieutenant governor, and the speaker of the state house of representatives.[12] Whenever the board declares a vacancy, the police

[8] *McNeely v. Speight*, 7 La. App. 719 (1928).
[9] *Laloire v. Lacoste*, 4 La. 114 (1882).
[10] *Const. 1921*, art. 8, sec. 6.
[11] *Acts of La.*, 122 of E. S. 1921.
[12] *Const. 1921*, art. 8, sec. 18; *Acts of La.*, 122 of E. S. 1921, as amended by *Ibid.*, 98 of 1934. See *Rept. of Sec. of State*, 1931, p. 28, for a list of the registrars.

jury must appoint a successor within thirty days, otherwise the appointment is made by the board itself.[13]

All registrars are commissioned by the governor; they must then take the oath of office and give bond for five hundred dollars each. Salaries of registrars range from six hundred to two thousand dollars per year, and are paid one-half by the state and one half by the parish. No registrar may be elected or appointed to any other office within twelve months after vacating that of registrar. Deputy registrars may be appointed whenever police juries feel that they are necessary, and provision for their salaries must be made in the annual parish budgets.

The registrar of New Orleans is appointed by the governor and confirmed by the state senate, and he also holds office at the pleasure of the board of registration. His salary is four thousand dollars per year, one-half paid by the state and one-half paid by the city; and his bond is set at five thousand dollars. Provision is also made for the appointment of deputies and clerks by the registrar.[14]

Beginning with 1922, and every four years since then (in New Orleans beginning with 1927, and every four years since then), registrars of voters have been required to take a new and complete registration of voters on the personal application of the voters themselves.[14a] Precinct registers, certificate stub-books from which certificates showing registration are furnished,[15] duplicate certificate stub-books, and other records from which the necessary voting lists for primaries, general elections, and special elections are compiled, must be kept. These records are open to public inspection at any time. Registration lists are furnished to election officials at every election, and ten days before a primary or election is held each registrar is required to submit the number of registered voters in his parish to the secretary of state.[16]

In every year in which there is a general election, or a state or congressional primary, the registrar of voters must estab-

[13] *State v. Breaux*, 125 So. 288, 169 La. 394 (1929). This arrangement was originally created to protect the registration system from attacks by local political leaders in registering large numbers of negroes. In 1929, however, the governor and speaker of the house of representatives, a majority of the board, sought to remove and keep out of office registrars personally obnoxious to them. The police juries concerned immediately reappointed the registrars removed and the state supreme court upheld their action.

[14] *Acts of La.*, 122 of E. S. 1921.

[14a] As a result of abolishing poll taxes, a new registration of qualified voters must take place in 1935. This registration will be based upon poll book receipts for both 1934 and 1935.

[15] *Ibid.*, 229 of 1928.

[16] *Const. 1921*, art. 8, sec. 17.

lish a registration place for at least one day at every polling place, not less than seventy days before closing the registration rolls; and each year in which a municipal primary or election is held, he must establish a registration place for at least one day in each municipality not less than thirty days before the election.[17] The places and the hours of registration are published in the official parish journal.

Electors may not be registered within thirty days preceding an election in which they may offer to vote, but applications to the courts may be heard and determined during this period and the revision and transfer from precinct to precinct in the same parish may take place any time prior to the election. A voter's qualifications as to age and residence are determined as of the day preceding the election and not as upon the day of registration.[18] Also, during the thirty day period prior to any general or special election or any primary, the registrar is required to purge the rolls of the names of persons who have died, left the precinct, or who have become ineligible as electors from any other cause.

In New Orleans, with its large population, additional safeguards to the registration system are found. Two inspectors, appointed by the registrar, are constantly at work checking up on the registration rolls in order to keep them free of irregularities.[19] Provision is also made for the removal of names from the rolls, after notice and a hearing, on affidavit by two registered electors. Notwithstanding these provisions, registration scandals are still rather frequent.

Qualifications for Public Office, and Other Regulations

Every candidate for any district, parish, municipal, or ward office must be a citizen of the state and a duly qualified elector of the area in which the functions of the office are to be performed.[20] Whenever any officer changes his residence from the political area in which he holds office, the office is considered vacant and the vacancy is filled as provided for.[21] No person who has formerly been a tax collector or a custodian of public funds, and who has not obtained a discharge from the proper authorities from the obligations of his of-

[17] *Endom v. Monroe*, 86 So. 681, 112 La. 779 (1904).
[18] *State v. Joyce*, 54 So. 984, 128 La. 488 (1911).
[19] *Acts of La.*, 122 of E. S. 1921.
[20] *Const. 1921*, art. 8, sec. 18.
R. S., sec. 2607.

fice, is eligible to any local or state office, appointive or elective.[22]

Should a question arise as to the qualifications or residence of an office holder, it must be decided by an "intrusion into office" suit instituted in the proper district court by the district attorney, the attorney general, the governor, or by the person laying claim to the office.[23]

All local officers, elected or appointed, are required to take the oath of office and give bond, where the latter is necessary, within thirty days after receiving their commissions from the governor.[24] Failure to comply with these requirements results in vacating the office, and failure to qualify for office nullifies all official acts.

Dual office holding is prohibited. Acceptance of or qualification for a second office results in vacating the first.[25]

The benefits of free passes, transportation, franking privileges, or of passenger, telephone, or telegraph rates, are prohibited to all state and local officers. The acceptance of any of these benefits or favors automatically acts as a forfeiture of office.[26] Officers whose salaries are fixed by the constitution may not, unless so allowed, accept any fees or perquisites of office.[27] Money, rewards, bribes, presents, or promises of any one of them, may not be advanced to office holders, nor may they accept them if they are made with the intention of influencing in any way the officer in question.[28] Severe penalties have been provided upon conviction under this provision.

All officers, except in cases of impeachment or suspension from office, continue to perform their duties until their successors have qualified and have been commissioned.[29]

Unless otherwise provided for, all vacancies in office are filled by the governor with senatorial confirmation for the un-

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[22] *Const. 1921*, art. 19, sec. 11. Defaulters are likewise ineligible to hold office, *R. S.*, sec. 1186.

[23] *R. S.*, secs. 2592-94; *Acts of La.*, 102 of 1928; *State v. Schaumberg*, 89 So. 536, 149 La. 470 (1921); *State v. Ditlein*, 104 So. 56, 158 La. 814 (1925).

[24] *Const. 1921*, art. 19, sec. 1; *R. S.*, 851; *Acts of La.*, 11 of 1877, as amended by *Ibid.*, 245 of 1920, and 180 of 1928; *Andrews v. Biossat*, 28 La. Ann. 236 (1876). Also see *Acts of La.*, 19 of 1878 and *State v. Barham*, 187 So. 862, 178 La. 488 (1931).

[25] *Const. 1921*, art. 19, sec. 4; *Acts of La.*, 123 of E. S. 1921. Also see *Bouanchaud v. D'Herbert*, 21 La. Ann. 138 (1869); *State v. Arata*, 32 La. Ann. 193 (1880); *State v. Nockum*, 6 So. 729, 41 La. Ann. 689 (1889); *State v. Barham*, 187 So. 862, 178 La. 488 (1931); *State v. Montgomery*, 25 La. Ann. 138 (1873); *State v. Somnier*, 33 La. Ann. 287 (1881); *State v. Phenix*, 64 So. 129, 134 La. 329 (1914); *State v. Doyle*, 70 So. 822, 138 La. 350 (1915).

[26] *Const. 1921*, art. 19, sec. 15; *Coco v. Oden*, 79 So. 287, 143 La. 718 (1918).

[27] *Ibid.*, art. 19, sec. 10; *State v. Chauvin*, 85 So. 645, 147 La. 703 (1920).

[28] *Ibid.*, art. 19, sec. 12.

[29] *Ibid.*, art. 19, sec. 6; *State v. Hingle*, 50 So. 616, 124 La. 655 (1909).

expired terms.[30] In general, vacancies in all elective offices, where the unexpired terms are for more than one year, are filled by special elections called by the governor.[31] Certain vacancies in office, however, are always filled by the governor regardless of the length of the unexpired term.[32] They include the offices of coroner, justice of the peace, constable, police juror, parish school board member, and alderman in municipalities of less than five thousand population. The appointees of the governor must possess the necessary qualifications for holding their particular offices.

Nominations

Two methods of nominating candidates for public office have been provided for in Louisiana.[33] The first is that of primary elections, in which only party members may participate and which is predicated on party affiliation and organization. The second is that of nominating papers, in which non-party members may participate, and in which party members may participate on condition that they do not take part in a primary in which nominations for the same position or positions are made.

Primaries

The parish, as in other activities, also functions as the unit in primaries, and the whole party organization and procedure is formed with the parish as its basis.

A political party in Louisiana is one which has cast at least five per cent of the entire vote recorded in the state at the last gubernatorial or presidential elector election.[34]

Party affiliation is predicated upon registration.[35] When a prospective voter registers he is requested to announce his party allegiance, but he may not be required to do so. If he does not, however, he may vote only in general elections. If he does, he may vote in the primaries of his party preference. Any person may change his party affiliation, by so requesting the registrar, but he is barred by this action from

[30] *R. S.*, sec. 2606; *State v. Assessors*, 24 La. Ann. 410 (1872).
[31] *Acts of La.*, 112 of 1912; *In re Perez*, 88 So. 657, 146 La. 878 (1920); *State v. Ditlein*, 104 So. 56, 158 La. 814 (1924).
[32] *Acts of La.*, 286 of 1916; *State v. Ditlein* (above note).
[33] *State v. Michel*, 46 So. 480, 121 La. 874 (1908).
[34] All primary elections and party organizations in Louisiana are provided for in *Acts of La.*, 97 of 1922, as amended by *Ibid.*, 155 and 215 of 1924, and 110 of 1934. See also *Ibid.*, 8 of E. S. (2nd) 1934.
[35] *Ibid.*, 122 of E. S. 1921.

voting in primaries for six months. Likewise, persons registering without stipulating party preferences, may later announce their choice before the registrar, but may not vote in the primaries of the parties of their choice until six months have elapsed. For these reasons parish registrars are required to furnish lists of eligible party voters to the primary election officials concerned prior to each primary election, and no one may vote in the election whose name is not on the list. In view of the "closed" feature of Louisiana primaries, it is legal to require primary voters to promise to support the nominees of their parties in the general election.[36]

Primary elections are not merely the private affairs of political parties, but they are state regulated elections, constituting part of the state's election machinery.[37] The object, then, of a primary law is to secure to the people, free from political dictation, the right and privilege of choosing their nominees for public servants.[38] Consequently, political parties must make all nominations for candidates to the United States Senate and to Congress; and for state, district, parish, ward and municipal offices by direct primary elections. In municipalities with populations of less than five thousand each, however, the use of the nominating primary is optional.

Party policies and the administration of party activities are carried out in their entirety by a system of committees. The state central committee of each party consists of one member from each parish of the state and one member from each ward of the City of New Orleans, elected in the general primary every four years, together with twenty-four members from the state at large selected by the elected members at their first meeting, three from each of the eight congressional districts in the state.

District committees (judicial, congressional, and public service) consist of the members of the state central committee from the parishes contained in those districts, together with the members at large from those areas.

Parish committees consist of one member from each ward and a varying number of members from the parish at large, the number of the latter changing from time to time as the population of the parish varies with the population of the

[36] *State v. Michel*, 46 So. 430, 121 La. 874 (1908).
[37] *Ibid.*, and *Dastuque v. Cohen*, 14 La. App. 475 (1930).
[38] *State v. Committee*, 45 So. 526, 120 La. 620 (1908).

state, and are regulated by the state central committee. Members of parish committees are elected in the general primary held every four years.

Municipal committees are of two kinds, those of municipalities with populations of five thousand or more, and those of municipalities with populations of less than five thousand. Municipal committees of the former class ordinarily consist of the members of the parish committees selected from the parish wards within the municipalities and those voted for from the parish at large who are residents of the municipalities. Committees of the second class of municipalities, where the communities have decided to use the primary for nominating purposes instead of nominating papers, usually consist of five members each, and are selected by the parish committees until their successors are elected at later primaries.[39]

The state central committee of each party, and its subordinate committees, are legal entities and are the governing authorities of their political parties.[40] They are authorized to make any rules and regulations for their government and organization not in conflict with the regulatory legislation. The real control over parties is vested in their state central committees, for they provide for and direct the manner in which all subordinate and local committees are organized and constituted, fix their number, regulate their terms in office (for not more than four years), and the time of their election; but they may not interfere in matters not authorized by statute.[41] It has been held that the state central committee, under a law authorizing it to add qualifications for the right to vote in party primaries, might add the qualification of "white".[42]

Party committeemen are public officers, committees of political parties are instrumentalities of the state, and their members and duties are of a public character.[43] All members of committees required to be elected are selected at the primary election of each party every four years. Vacancies are filled at the discretion of the particular committees. Candidates for committee membership must be qualified voters of

[39] Much of this information is not contained in legislation or in court decisions, but was secured from Mr. Paul G. Borron of Baton Rouge, former member of the state legislature, who sponsored the general primary law during its consideration and passage; and from other like sources.

[40] *Parker v Committee*, 5 La. App. 712 (1926).

[41] *State v. Committee*, 45 So. 526, 120 La. 620 (1908).

[42] *Marrero v. Middleton*, 59 So. 868, 131 La. 482 (1912).

[43] *Dastuque v. Cohen*, 181 So. 746, 14 La. App. 475 (1930).

the areas from which they are candidates, and they must be affiliated through registration with the party holding the primary. All committee members may act through proxies.

On the first Tuesday of October preceding the general state election, the state central committee meets and issues a call for a primary election to be held on the third Tuesday of January following the call. Not more than twenty days later district and parish committees meet and order primaries for district, parish, and ward offices on the same day as that set by the state central committee. Primaries for the nomination of candidates for the United States Senate and Congress, and for other state, judicial and local offices, which are filled in the "off-year" elections held in November every other year, are ordered for the second Tuesday in September.[43a] This action is likewise followed by the necessary activities of district, parish, and municipal committees. When municipal elections do not fall on the date of the general state election, or on the date of the "off-year" November elections, the municipal committees concerned are required to meet and order their nominating primaries not less than seventy and not more than ninety days prior to the date of the municipal elections.[44] These calls for primary elections are a duty imposed by law upon party committees, and acts of this character may be compelled by a court of proper jurisdiction.[45]

Candidates for nomination are required to announce their intention by filing their names within twenty days for state and district nominations, and within ten days for others, after the call is issued.[46] At the same time candidates for national, state, and higher judicial nominations are required to deposit one hundred dollars each, candidates for district and parish nominations are required to deposit five dollars each, and candidates for ward nominations are required to deposit one dollar each, all deposits to be made with the chairman of the ppropriate committee. These deposits are then forwarded to the secretary of state to help defray the cost of printing the election ballots, tally sheets, and for furnishing other necessary material for the election.

[43a] When primaries for U. S. Senators and Representatives can be held during the regular state primary in January, the above provisions are ignored.

[44] *Acts of La.*, 230 of 1914. But *Ibid.*, 41 of E. S. (2nd) 1934, postponed all municipal primaries and elections that should have been held during 1935 until 1936.

[45] *State v. Committee*, 188 So. 857, 173 La. 844 (1931).

[46] *Boudreaux v. Committee*, 114 So. 716, 164 La. 869 (1927).

The qualifications of voters and of candidates alike in primary elections are the same as those required by the constitution and laws of the state for voters in general elections, and the further qualifications prescribed by the state central committees.[47] Objections to the qualifications of candidates must be filed by a committee member or by a candidate within five days after the last day upon which notifications of candidacy can be filed. Within forty-eight hours after receiving the objection the proper committee meets, and must decide the question within the next twenty-four hours. If it decides the candidate is qualified its decision is final. If it decides against the candidate, appeal to the district court is the proper procedure for the disqualified candidate.[48] The committee may pass only on qualifications which it may have prescribed. Where opposition to a candidate is sustained, his deposit fee is returned to him.

The ballots and supplies for national, state, district, parish and ward primaries are furnished by the state.[49] In municipal primaries, the municipalities must furnish their own ballots. The expenses of actually conducting primaries are borne by the individual parishes or municipalities. Any other expenses, and the expenses of the party committees, are defrayed by committee assessments against the individual candidates.

Five commissioners of elections, selected and commissioned by the chairman of the parish committee, or by the chairman of the municipal committee in municipal primaries, preside at each polling place. They must possess the same qualifications as do voters. If there are five or more local candidates, each submits the name of one qualified voter for each polling place in the parish or in the municipality to the chairman of the parish or the municipal committee not later than twenty-five days before the primary is held. If there are only four or three local candidates, each submits two names for each polling place; and if there are only two candidates, each submits three names. If there is only one candidate there need be no election for that party nomination; and if there are no candidates at all for the office or offices,

[47] *Smith v. Committee*, 115 So. 54, 164 La. 981 (1927); *Payne v. Gentry*, 90 So. 104, 148 La. 707 (1921).
[48] *Duplessis v. Harrell*, 118 So. 264, 9 La. App. 171 (1928); *Melerine v. Committee*, 114 So. 711, 164 La. 855 (1927).
[49] *State v. Michel*, 46 So. 430, 121 La. 874 (1908).

the parish or municipal committee names the nominee without there being a primary for that nomination, and the state, district and congressional candidates submit the names from which are chosen the commissioners of elections. The total names of all those submitted are then subjected to a drawing, and the first five are selected for each polling place. Watchers are selected and commissioned in the same manner.[49a]

Ballots and election materials are distributed to the parish committees by the secretary of state, and to the municipal committees in municipal primaries by the municipal governing authorities.[50] They in turn supply the commissioners of elections. Polls are established in each voting precinct by the parish and municipal committees. Sheriffs furnish lists of poll book signatories, and the registrar distributes lists of the registered voters according to precincts. Before the actual balloting begins the commissioners swear each other as election officials.

Voters give their names, and if required, show their registration certificates and poll book receipts to one of the commissioners. If their names are found on the registration list and on the poll list, ballots are given them to be marked in the individual booths provided. The numbered counterfoil on each ballot is detached and the ballot is then placed in the ballot box. Voters are aided by the commissioners in cases of blindness or physical disability, but a notation to that effect must be made on the ballot.

Commissioners canvass the returns, make a tally sheet in quadruplicate, tabulate the votes, sign the lists, and swear to their correctness. They then make a public announcement of the result of the election. One tally list and one poll list are mailed to the secretary of state. One tally list and a poll list are given to the chairman of the parish committee in general primary elections, and to the chairman of the municipal committee in municipal primaries, to be retained by them for six months open to inspection. A third tally list and poll list, together with the ballots, are placed in the ballot box, the box is sealed and then deposited with the district clerk. The promulgations of returns are made by the secretary of state within eight days after their receipt.

[49a] But see *Acts of La.*, 4 of E. S. 1934, authorizing boards of supervisors of elections to appoint special officers to preserve peace and order.

[50] See *Peres v. Cognevich*, 100 So. 444, 156 La. 831 (1924) for a description of ballots.

Contests of elections must be filed by petition, with the detailed reasons for such action, to the judge of the district court. The district judge then issues an order to the contestee, requiring him to answer the petition within five days. The court must render judgment not later than twenty-four hours after the case is submitted for settlement. There are no jury trials in primary contests. If an appeal is taken, the appellate court must hear and decide the case at once. Its decision is final. Contested elections have preference over all other cases.

Second primaries are held exactly five weeks after the first when no candidate for an office has received a majority vote, and only the two highest candidates in the first primary may be candidates in the second. If either withdraws, of course, the second primary is not necessary. The expenses of run-off primaries are borne as in the regular ones, and the same commissioners act in the additional primaries.

When a vacancy occurs in the office of a party candidate, the appropriate committee calls a special election to take place not less than ten days after the call is issued to fill the vacancy. In case there is not sufficient time for a special primary before the general election, the appropriate committee names a candidate to complete the party ticket.

Nominating Papers

The nomination of district, parish, and ward candidates for office may also be made by the use of nominating papers, but voters taking part in primaries may not sign nominating papers, neither may those signing nominating papers take part in primaries.[51]

Candidates for district offices may be nominated by papers signed by at least one thousand qualified voters; candidates for parish offices may be nominated by papers signed by not less than one hundred qualified voters; and candidates for ward offices may be nominated by papers signed by twenty-five qualified voters. The registrar is required to certify, however, at least fifty per cent more names on the nominating papers than are required by law to make a nomination.

[51] *Acts of La.*, 180 of 1916. This is probably superseded by *Ibid.*, 242 of 1926, which is not fundamentally different, but which provides only for city, town, and village nominating papers, and does not mention district, parish, or ward nominations. Also see *Ibid.*, 97 of 1922.

Each voter signing a nominating paper must include his residence, with the street number if possible, and may sign for the nomination of only one person to any particular office. All names must be signed in person and are verified by the parish registrar.

All nominating papers, and the subsequent certificates of nomination, must specify the names of the candidates, the offices to which they are nominated, the party or political principle that he represents in not more than three words, and the residence and place of business of the candidate.

Candidates for nomination to public office in municipalities with populations of less than five thousand, unless the primary system of nomination has been adopted, may be nominated by papers containing the signatures of not less than fifty qualified voters for cities, of at least twenty-five qualified voters for towns, and of at least ten qualified voters for villages.[52]

Elections

The general state election is held once in four years on the Tuesday following the third Monday in April. Parish and ward elections are held on the same day.[53] The elections are in the even years, the last one being in 1932. In all municipalities not under special charters or not otherwise excepted, elections are held on the Tuesday following the second Monday in June of the same years.[54]

All elections, except primaries and municipal elections in towns having populations of less than twenty-five hundred, when they are held at the same time as the general state elections, are by official ballot, printed and distributed at the expense of the state. Devices of the various political parties or nominating papers head each list of candidates. By checking the device with an (X) the elector may vote a straight ticket, or if he desires to vote for candidates of the various parties for different offices he may do so by checking with an (X) the spaces left opposite the names of the candidates.[55] Names of independent candidates may appear on ballots with a device; and names of independent candidates may be written in on the ballot, provided they have consented to be voted for

[52] *Ibid.*, 242 of 1926.
[53] *Const. 1921*, art. 8, secs. 9-10; *Acts of La.*, 130 of 1916.
[54] *Acts of La.*, 104 of 1922. Also see *Ibid.*, 127 of 1896, and *Payne v. Gentry*, 90 So. 104, 149 La. 707 (1921).
[55] *Seal v. Knight*, 121 So. 682, 10 La. App. 563 (1929).

in written statements before the district clerk.[56] Electors are privileged from arrest during their attendance at elections, and in going to and returning from them, except for treason, felony, or breach of the peace.[57] The influencing of voters is prohibited, and grand juries are ordered to investigate charges of violations of this prohibition.[58]

Thirty days before each general state election the governor gives notice by issuing a proclamation, and the board of election supervisors of each parish gives fifteen days notice in the parish journal. In all elections the person or persons receiving the highest number of votes, a plurality, are declared elected. Elections ending in a tie are returned to the voters for settlement at a subsequent election after public notice for ten days has been given. Election days are legal holidays, and must be completed in one calendar day. Sufficient police or deputy sheriffs attend the polls to ensure order. Police jury wards are numbered as voting precincts, and the police juries designate the number of polls and their locations in each ward.

A board of election supervisors is in charge of general elections in each parish. The board consists of the registrar of voters and two other persons appointed by the governor, one of whom is designated as president.[59] A board of commissioners of three members and a clerk is appointed for each polling place in the parish by the board of election supervisors thirty days before the election. They must be qualified voters of the ward, and are appointed from lists each containing six names, furnished by the interested political parties. These lists must be submitted to the boards of supervisors at least thirty-five days before the election day. Insofar as it is practicable, commissioners are appointed so as to represent equally all political parties authorized to make nominations. Each of the political parties or nominating bodies are permitted to have one watcher at every voting place. Commissioners and clerks receive three dollars per day and deputy sheriffs receive five dollars per day, all for not more than three days. In municipalities with populations of twelve

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[56] *Const. 1921*, art. 8, sec. 15; *Lacombe v. Laborde*, 61 So. 518, 132 La. 485 (1913). See *Acts of La.*, 80 of 1934, a constitutional amendment.

[57] *Ibid.*, art. 8, sec. 8; *Thomas v. Henderson*, 51 So. 202, 125 La. 292 (1910).

[58] *Ibid.*, art. 8, sec. 28.

[59] *Acts of La.*, 307 of 1926. Also see *Ibid.*, 6 and 22 of E. S. 1934, providing, among other things, for the selection of two more commissioners for each polling place.

thousand or more, commissioners and clerks receive five dollars per day.[60]

The ballot boxes and other supplies are furnished by the secretary of state to the boards of elections supervisors, who distribute them throughout their parishes. Lists of registered voters and poll tax lists are sent to each precinct. The commissioners check off the names of those voting from the lists. Voters may be challenged, but may establish their right to vote on affidavit by two resident voters of the ward and precinct.[61]

As soon as the polls are closed the commissioners mark the number of votes on the poll lists and sign them. Ballots are then checked against the poll lists to see that there is no discrepancy. Ballots objected to are counted but are separated from the others. Three tally sheets are kept in counting the ballots, and as soon as the ballots are counted the results are declared. All ballots cast must be counted in public.[62] The tally sheets are then signed and sworn to as being correct; and triplicate compiled statements of the number of votes cast for each candidate, the offices to which they aspired, the number of ballots in the box, and the number rejected with the reasons for their rejection, are made and sworn to. One of the tally sheets, the poll books, and one of the compiled statements are sent to the board of election supervisors. One of the tally sheets, one of the poll lists, and a compiled statement are sent to the secretary of state. The third tally sheet, compiled statement, poll list, and the ballots, are placed in the ballot box. The latter is then sealed and delivered to the district clerk for safe keeping.

Within three days after the polls have been closed, the boards of election supervisors meet at their courthouses, and in the presence of at least three qualified voters make a compiled statement of the vote for all officers, and send the lists to the secretary of state. The secretary of state compiles the returns and publishes the results in the official journal of the state.[63] Within thirty days after the election the governor issues commissions to all officers shown by the compilation of returns to have been elected, except to the incom-

[60] *Ibid.*, 57 of E. S. 1921.
[61] *Jacobs v. Cutrer*, 186 So. 119, 17 La. App. 883 (1931).
[62] *Const. 1921*, art. 8, sec. 7.
[63] *Auld v. Walton*, 12 La. Ann. 129 (1857).

ing governor, the lieutenant governor, and members of the state legislature.

An election may be contested within thirty days after the promulgation of the returns,[64] by filing in the district court a petition of facts, signed by at least twenty voters in a district election and by ten voters in a parish, ward or municipal election.[65] If the finding of a majority of the jury be in favor of a new election, the sheriff must order the election to be held on the fourth Monday after the last day of the term of court on which the decision was handed down.[66] The verdict is final and no new trial may be held, nor may there be an appeal.[67]

Absentee Voting

Any registered, qualified voter, who expects to be absent on business on the day of special, general, or primary elections, national, state, or local, may vote an absentee ballot under the following conditions:[68]

Not more than ten days nor less than two days before the election is held, the interested voter makes a sworn application to the district clerk (in New Orleans to the civil sheriff) of his parish for an official ballot. In municipal elections the ballots are provided by the governing officials. Sufficient absentee ballots are furnished by the secretary of state before all general and primary elections.[69]

The name of the applicant is then posted and he is given a ballot to be marked in secret. The marked ballot is deposited in an envelope, upon the outside of which the voter makes a signed sworn statement that it contains his ballot and that it was marked in secret. On the day of the election all absentee ballots are delivered by the district clerks, the civil sheriff of New Orleans, or by the municipal authorities in such elections, to the boards of commissioners of the proper precincts.

The ballots are counted separately, are deposited in the ballot box separately, and are subject to being challenged in the same way as are regular ballots.

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[64] *Gray v. Bourgeois*, 32 So. 42, 107 La. 671 (1902).
[65] *R. S.*, sec. 1419; *Acts of La.*, 24 of 1877, 24 of 1894, and 5 of 1899.
[66] *R. S.*, 1424; *Payne v. Gentry*, 90 So. 104, 149 La. 707 (1921); *Bartmess v. Hendricks*, 91 So. 68, 150 La. 627 (1922).
[67] *R. S.*, secs. 1422-23.
[68] *Acts of La.*, 61 of E. S. 1921.
[69] *Vidrine v. Eldred*, 96 So. 566, 153 La. 579 (1922).

Corrupt Practices

The Corrupt Practices Act of Louisiana governs all state, district, parish, ward, and municipal elections and primaries, and all primaries for the nomination of United States Senators and Representatives.[70]

Agreements to divide offices or emoluments with persons not actually rendering services in such offices are illegal. Candidates for the offices of United States Senator and governor of the state may spend twenty-five thousand dollars each in the primary. Candidates for the offices of United States Representative, supreme court judge, and public service commissioner, may each spend four thousand dollars in primary campaigns. Candidates for the offices of appellate judge are each allowed twenty-five hundred dollars, and candidates for the offices of district judge, district attorney, sheriff, district clerk, and assessor, are each allowed two thousand dollars for the primary. Candidates for either house of the state legislature and for all other offices may spend not more than one thousand dollars each in the primary.

Occupants of public offices not elected, business corporations, banks, and public utilities, are prohibited from making contributions to the campaign funds of candidates.

No campaign loan or contribution may be used to encourage any offense against the elective franchise, encourage any act forbidden by state law, pay the expenses of persons in order to secure their votes, hinder or obstruct voters in the act of voting, pay a person to withdraw as a candidate, or hire workers at the polls other than the watchers allowed by law.

Money spent by relatives or fellow officials is the same as money spent by the candidate and must be accounted for.

At the time a person announces his intention to become a candidate for nomination to public office, he is required to file with the proper party committee the names of at least one and not more than five individuals selected to receive, spend, disburse, and audit all funds contributed, donated, or subscribed, to aid in his nomination or election. The written consent of each member of the group is submitted with the

[70] *Acts of La.*, 111 of 1934. But see *Ibid.*, 9 of E. S. (2nd) 1934, practically nullifying this legislation and substituting very little for it.

list of names. The candidate may select himself as a member of the committee, or he may announce himself as his own manager. One of the committee acts as the treasurer. The committee may act for more than one candidate if it so desires. All contributions and all expenditures must pass through the hands of the committee or of the manager.

Within five days after the primary, or within twenty days after the general election, the treasurer of the committee, or the manager, must file an itemized report of all contributions and expenditures of amounts of five dollars or more, together with the names of donors or sources and the names of those receiving payments, with the proper party or election committee. At the same time the candidates for parish local offices must file a like statement with the district clerk, and candidates for all other offices must file their statements with the secretary of state. Failure to file a statement acts as forfeiture of office if elected.

There are several interesting features embodied in this corrupt practices legislation. A search of the records of the state supreme and appellate courts failed to disclose a single case brought under the previous act, which is similar to the one now in force. It is conceded that there might have been suits brought in the district courts, for which there are no published reports, and decided in those courts without appeal; or, such cases might have been settled out of court.

In the second place, the financial statements are filed with political officers, ordinarily not very much interested in such reports, and there is thus little or no possibility of the latter instituting legal actions.

In the third place, the wording of some of the prohibitions is ambiguous.

In view of these facts, it is possible to conclude that the previous law failed in its purpose, and the present law seems little better.

The Recall and Removal of Elected Officials

Five methods are provided for the complete or partial removal of occupants of local offices. They are the recall, judicial removal, removal or suspension by the governor, address by the state legislature, and impeachment by the state legislature.

The Recall of Public Officers

Any district, parish, ward, or municipal officer (judges of courts of record excepted), popularly elected, may be recalled at a special election held for that purpose after the following requirements have been fulfilled.[71]

A petition signed by at least twenty-five per cent of the qualified voters of the area affected and directed to the governor, must be filed, requesting that an election be held to recall the officer in question. The petition must be verified by the registrar of the parish, or by the registrars of the parishes affected, within ten days prior to its presentation to the governor. The petition must likewise designate a chairman and a vice-chairman to act for the petitioners. The secretary of state is then required to certify that the signatures were signed prior to the presentation of the petition.

Not later than five days after receiving the petition the governor is required to call an election to take place on the first Tuesday after the sixtieth day from the date of the proclamation. The general election laws of the state apply to all recall elections, and the officer whose recall is sought has the right to designate a commissioner for each polling place. The chairman designated by the petitioners names a second commissioner for each poll, and the third member is named by the board of election supervisors.

The majority of the votes cast determines the result of the election. If the recall is successful, the governor declares the office vacant, and it must then be filled according to law. If the recall fails, no other recall election may affect the same officer until eighteen months have elapsed from the date of the last recall.

Judicial Removal

Any local officer, whether district, parish, ward, or municipal (judges of courts of record excepted), may be removed by judgment of the district court of his domicile for high crimes and misdemeanors in office, for incompetency, corruption, favoritism, extortion, oppression in office, gross misconduct, or habitual drunkenness.[72] This method applies

[71] *Const. 1921*, art. 9, sec. 9; *Acts of La.*, 121 of E. S. 1921; *State v. Hufty*, 11 La. Ann. 803 (1856). In municipalities under commission government the procedure is somewhat different.

[72] *Const. 1921*, art. 9, secs. 6-7; *Acts of La.*, 185 of 1880; *Saint v. Irion*, 116 So. 549, 165 La. 1085 (1928).

only to elected officers, or to those appointed by the governor, other appointed officers are not affected by its provisions.[73]

The attorney general, or district attorney, may institute such suits on his own initiative, but he must begin an action on the written request, specifying the charges, of twenty-five or more citizen taxpayers, or of the governor, in the case of district or parish officers.[74] In the case of ward or municipal officers, a petition by ten qualified citizen taxpayers is sufficient. Suits against the district attorney are brought by the attorney general, by the district attorney of an adjoining district, or by an attorney appointed by the court. No suit for removal may result in the immediate suspension from office of the defending occupant, but the trial court may suspend the officer after ten days notice, subject to review by the appellate court.

Either the plaintiffs or defendant may claim a jury trial.[75] The costs of the trial are paid by the defendant if he loses the case, and by the citizens petitioning for removal if they lose. It is thus plain to see that any group of citizens of a community will think twice before instituting a suit of this character because of the above stipulation.

In case a public official defaults on funds entrusted to his custody, the district attorney is required to begin an action on instruction by the district judge. If the accused is held guilty of default the court may declare the office vacant.[76]

Executive Action

It has been shown elsewhere, that the governor has considerable appointive power in connection with local offices, particularly where he acts to fill a vacancy in an office for an unexpired term. Insofar as these latter appointees are concerned, it appears that the governor may remove any officer appointed by him for cause or for incompetency,[77] and no court may act to prevent his exercising this authority.[78]

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[73] *Richard v. Rousseau*, 35 La. Ann. 988 (1883); *State v. Stanley*, 188 So. 845, 173 La. 807 (1931).
[74] *State v. Egan*, 70 So. 97, 138 La. 201 (1915); *Glisson v. Biggio*, 71 So. 204, 139 La. 28 (1916); *State v. Ferguson*, 97 So. 415, 154 La. 237 (1923).
[75] *State v. Waggner*, 8 So. 209, 42 La. Ann. 54 (1890).
[76] *R. S.*, secs. 1127-28.
[77] *Acts of La.*, 49 and 125 of 1877.
[78] *Ibid.*, 81 of 1908; *State v. Rost*, 16 So. 776, 47 La. Ann. 58 (1895).

On the recommendation of the state auditor or of the police jury of the parish concerned, the governor may suspend any financial officer temporarily, and may appoint a qualified person to that office for the same period of time.[79]

Address

For any reasonable cause, whether sufficient for impeachment or not, any officer, except the governor or acting governor, on the address of two-thirds of the members elected to each house of the legislature, may be removed and is consequently ineligible to succeed himself.[80] The cause or causes for the removal must be stated in the address.

Impeachment

All district officers, whether elected or appointed, are liable to impeachment for high crimes and misdemeanors in office, incompetency, corruption, favoritism, extortion, oppression in office, or for gross misconduct or for habitual drunkenness.[81]

Impeachments are voted by the house and tried by the senate, a two-thirds vote of the senators elected being necessary to convict. Impeachments may be requested by memorials submitted by citizens interested in securing such action.[82]

An examination of a number of cases of removal from office points to removal by judicial action as the most effective method of removal of local officers in Louisiana, although the recall has accounted for a number of casualties.[83] As far as the writer has been able to ascertain, no removals have resulted from legislative address or impeachment under the last three constitutions. Neither has the governor's power of suspension or removal, on the whole, been exercised very freely, except during the years 1929-1931.

Conclusions

No study of suffrage and elections in Louisiana, even though it be only of a local character, is complete without some

[79] *Const. 1921*, art. 9, sec. 8; *Acts of La.*, 9 of 1904.
[80] *Ibid.*, art. 9, sec. 8.
[81] *Ibid.*, art. 9, secs. 1-2.
[82] *R. S.*, secs. 1788-45.
[83] See *Baton Rouge State-Times*, official state journal, for the years 1929-1930. Nearly all of the recall elections had to do with village and town officials.

consideration being given to the subject of restrictions on voting. Patterned after the early Mississippi plan to exclude negro voters, the Louisiana system originally contained the "grandfather" clause as a basis, but the action of the United States Supreme Court in *Guinn v. United States,* 238 U. S. 347 (1915), forced the political leaders of the state to adopt other and equally effective methods of securing their objective.

The seven voting qualifications listed above, taken as a whole, seem to be sound and non-discriminatory on the surface. The secret of the plan's success lies in its administration, a safe enough feature at present, since the United States Supreme Court has refused, in the past, to inquire into the administration of a law which on the surface is uniform and does not involve discrimination.[84] It is admitted that the purpose of this plan is to exclude the negro vote, not altogether, but sufficiently to secure white supremacy at the polls. A casual study of the results of the plan will indicate, however, that not only the negroes but a number of the white citizens of the state have also been excluded, a feature that may have been not unanticipated.

In 1930, the total adult population of Louisiana, twenty-one years of age and over, was 1,134,852 in number. Of this number 415,047 were negroes, or 36.6 per cent of the adult population.[85] In the same year there were approximately only 362,701 registered voters in the state, or about 32 per cent of the total adult population.[86] Of this number, only 2,279 negroes were registered and qualified to vote, or approximately 5 per cent of the negro adult population; while 361,291 whites were registered and qualified to vote, or approximately 51 per cent of the white adult population. Of the registered voters, 264,763 were registered as Democrats, and 5,344 were registered as Republicans; or approximately 270,000 expressed their party affiliation, leaving about 90,000 without any party preference and hence unable to vote in the primaries.[87] These figures indicate that the negro vote is practically eliminated, and either through inability to meet voting qualifications, or through lack of interest, practically 49 per cent of the potential white vote is disqualified.

[84] *Williams v. Miss.*, 170 U. S. 213 (1898).
[85] *U. S. C. R.*, 1930 Pop. III, Pt. I, p. 48.
[86] See *Report of the Secretary of State*, 1938, p. 358.
[87] This table is more inaccurate than are the tables in previous reports of the secretary of state, but it is used in order to make a comparison with the census reports of the same year.

A few conclusions may be drawn from the table just cited. In the first place, there are a number of errors. Discrepancies are apparent between total poll taxes paid and the total registered vote. This may be due, of course, to inability to qualify otherwise as a voter. Discrepancies are also apparent between the total number of registered voters, and the total number of white and negro voters. If these errors can be discounted, the following facts stand out. There are more white foreign born voters than there are native born negro voters. Likewise, the illiterate and literate negro vote has been eliminated almost 95 per cent, while the illiterate white vote has not been very much restricted. For instance, the illiterate white vote runs from one-seventh of the total vote in Jefferson Parish, to one-fifth in Plaquemines Parish, to one-third in Assumption, Cameron, and Vermilion Parishes, and to one-half of the total vote in St. Martin Parish. It is interesting to note here that the total white illiteracy of ten years of age and over in the state in 1930 was only 7.3 per cent.[88]

Comparisons between the total registered vote, and the number of voters participating in gubernatorial and United States senatorial primaries and elections, and the number of voters participating in presidential elector elections, reveal still further disclosures. It is natural, that in a southern state, the primary plays a more important role than does the election, since selection in the Democratic Primary is tantamount to election.

In October, 1928, there were 379,270 registered voters in the state,[89] and in the gubernatorial primary of the preceding January a total vote of 288,915 was recorded,[90] or 76 per cent of the registered voters. In the election of that year only 96,687 votes were cast for the candidates for governor, or 25 per cent of the registered voters. In 1924 there were 309,170 registered voters in March of that year,[91] and 239,529 votes were cast in the first primary for a candidate for governor,[92] or 77 per cent of the registered voters. In the run-off primary 217,886 votes were cast.[93] In the general election

[88] *Rept. of State Dept. of Ed.*, 1931, p. 19.
[89] *Rept. of Secy. of State*, 1929, p. 880.
[90] *Ibid.*, p. 117.
[91] *Ibid.*, 1925, p. 840.
[92] *Ibid.*, p. 486.
[93] *Ibid.*, p. 480.

of the same year only 67,640 votes were cast,[94] or 22 per cent of the total registered voters.

The same condition is found in primaries and elections for United States Senators. In 1930 there were approximately 362,000 registered voters.[95] In the primary for nomination by the Democratic Party to the United States Senate there were 261,091 votes cast,[96] or 72 per cent of the registered voters. Only 130,560 votes were cast in the November election, or 34 per cent of the registered voters.

A different condition prevails in presidential elector elections. In 1928 there were 379,270 registered voters,[97] and 215,815 votes were cast in the November election,[98] or 57 per cent of the registered vote, more than in other national elections, but less than in other primaries.

Still another basis of comparison is to use the census figures for parish populations of fifty thousand or more and the registered voters in these parishes.[99] Caddo Parish with a population of 124,670 had only 17,121 registered voters, or one-seventh of the population. East Baton Rouge Parish had a population of 68,208 with only one-sixth of them registered, or 11,087. New Orleans (Orleans Parish) had a population of 458,762, with one-fourth of them registered, or 117,347 in number. Ouachita Parish had a population of 54,337, with one-eighth of them registered, or 6,811 in number. Rapides Parish had a population of 65,455, with one-sixth of them registered, or 10,152. St. Landry Parish had a population of 60,074, with one-ninth of them registered, or 6,878 in number.

In evaluating these findings it is not enough to say that the negro vote has been largely eliminated. The results of the Louisiana voting qualification system are far more significant in their relation to the white vote in the state.

In the first place, registering officials *may* exercise powerful discretion in seeing that these qualifications are fulfilled, not only by negroes but also by whites. Secondly, the Democratic Primary is *the* election. If a voter registers with any other party, he has no voice in selecting the candidates who will be elected. Finally, registering officials can determine that prospective voters do not register with any other

[94] *Ibid.*, p. 498.
[95] *Ibid.*, 1933, p. 358.
[96] *Ibid.*, p. 70.
[97] *Ibid.*, 1929, p. 880.
[98] *Ibid.*, p. 119 in supplement.
[99] See *Ibid.*, 1933, p. 358, and *U. S. C. R.* cited before.

party in numbers large enough to cause any uneasiness on the part of the leaders of the Democratic Party. The conclusion seems obvious. Voting restrictions not only operate to disfranchise the negro, but they may also operate to secure the dominance by an inner group of the Democratic Party of the state, by allowing easily influenced white illiterates to register and vote, and at the same time white literates are disqualified through failure to fulfill certain voting qualifications, particularly the voluntary signing of poll books and voluntary registration.

Qualifications for public office, and other regulations that potential office holders are subject to, although aimed at excluding the negro, are beneficial in themselves, and if properly enforced would lead to higher standards for occupants of public office.

Voluntary registration, subject to proving one's identity, seems far superior to the house to house canvass method, since a burden is laid on the interested citizen to qualify in order to exercise the franchise. Some method, similar to that used in New Orleans, might, however, be devised to check and verify the residence of registered voters between the regular registration years.

Party organization, as might be expected in a southern state, is highly refined and centralized, for party committees are organized in a hierarchical system more susceptible of control from within the hierarchy than by the party members themselves, particularly as to policy.

Primary expenses and the expenses of nominating groups are borne almost entirely by the candidates and their supporters, an obligation that the otherwise qualified citizen is seldom able to bear. Inasmuch as the legislature and the state courts have repeatedly declared that nominating procedure is a part of the election machinery of the state, the latter should bear its entire cost, with the exception, of course, of the purely personal expenditures of the candidates for nomination.

Louisiana prohibitions with respect to corrupt practices seem but idle gestures and are practically meaningless. Prohibitions covering a greater range, and with more effective methods of enforcement, are to be desired. Party committees are not likely to engage in suits involving corrupt acts unless

it is to their advantage; and without their support, or that of certain politically selected officers, little can be accomplished under present legislation.

Recall elections may be democratic, but they are cumbersome and slow of achievement, and not always just. If citizens elect the wrong man to office, may they not also, under strong emotional stress or because of peculiar prevailing conditions of a temporary nature, remove a qualified and satisfactory public official? Executive or judicial removal seem superior to the other methods provided; the former after notice and a public hearing, the latter after allowing the officer in question every opportunity to present his side of the controversy.

Democratic yet restricted, popularly supported yet controlled from within, making possible a purified and highly intelligent electorate yet seeming to disfranchise, comparatively speaking, more literate than illiterate white citizens—such are the virtues and inconsistencies of suffrage, offices, and elections in Louisiana.

CHAPTER XII

Education

Schools and governmental institutions are interdependent, each deriving support from the other. Without such mutual cooperation and support neither can achieve a full measure of success and service. The socialization and group consciousness of the child, the community spirit leading to a social interest which our schools foster, the unification of effort, by students and teachers alike, which has become an important feature of our school systems, all have a beneficial effect on the relation existing between the individual and his government, and result in an everwidening field of activity and usefulness on the part of our governmental agencies. Because of this new relationship brought about by the school as an intermediary, because of the fact that one of the most important functions of the state is to prepare the child of today to become the citizen of tomorrow, educational organization and its facilities are receiving more and more attention, and

the student of government must include them within his field of observation.

The State Educational System

The educational system of the state consists of all free public schools and all institutions of learning supported in whole or in part by the state. It is a state institution, and the state has assumed full responsibility for its welfare and support.[1] Separate free public schools are maintained for the education of white and colored children between the ages of six and eighteen years.[2]

The State Board of Education

The state constitution and statutes confer upon the state board of education the power to supervise and control all the free public schools of the state.[3] The state board of education consists of eleven members: three appointed by the governor and confirmed by the state senate for four year terms, one from each of the public service commission districts of the state; and eight elected for terms of eight years, one from each congressional district of the state.[4] This board is a body politic and corporate with authority to sue and to defend itself in suits. All vacancies are filled for the unexpired term by the governor with senatorial confirmation. The members receive ten dollars per day for the number of days the board is in session, and their traveling expenses. A president and a vice-president are selected by the board members. There must be at least one annual meeting on or before the first Monday in December, but the president may call meetings at any other time.

The state board of education has prepared the courses of study, and the rules and regulations for the organization and administration of the public schools of the state, all of which must be enforced by the parish school boards and their parish superintendents. It has adopted a list of basic text-books and requires the uniform use of the list. It is authorized to receive all gifts, grants, and donations made to the public school

[1] *Const. 1921*, art. 12, sec. 1; *State v. New Orleans*, 7 So. 674, 42 La. Ann. 92 (1890); *Nelson v. Homer*, 19 So. 271, 48 La. Ann. 258 (1896).
[2] *Ibid.*, and *State v. School Board*, 33 La. Ann. 1469 (1881).
[3] *Const. 1921*, art. 12, secs. 4-6; *Acts of La.*, 100 of 1922.
[4] *Idem.*

system, and may accept federal aid and aid from out of state sources which may become available for school purposes. It requires monthly and other reports from all parish superintendents, but is prohibited from controlling in any way the business affairs of parish school boards or the selection or removal of their officers or directors.

The State Superintendent of Education

The state board of education acts through its secretary and executive officer, the state superintendent of education, who is elected from the state at large for four years at each general state election.[5] The state superintendent is required to keep and file all records and reports submitted to him by the educational boards and officers in the state, for possible examination by any interested person. It is his duty to keep in close touch with all public schools throughout the state with a view to seeing that the physical school plants are adequate and are kept in good condition; that the courses of study prescribed by the state board are followed; that classes are not over-crowded; that children are properly classified according to grade; that proper educational methods are used in the presentation of the subject matter of the various courses taught; and to assist the local authorities in any way possible.

Each year he makes a report to the governor and legislature on school conditions, the progress made and possible improvements to be made in the future, the amount and condition of school funds, the distribution of state school revenues during the previous year, the amount collected and distributed for public school purposes from local taxation or from other sources, and how it was spent. This report is really an abstract of the annual reports of the parish superintendents to the state superintendent.[6] The domicile of the state board of education, and of the state department of education, with its various divisions and bureaus under the state superintendent, is in Baton Rouge.

Local Educational Organization

The parish is the unit of educational administration in Louisiana, and the parish school board, through its super-

[5] *Ibid.*, sec. 5, as amended 1922, and *Acts of La.*, 100 of 1922.
[6] See Foote, J. M., *Record and Report Forms used in Louisiana Schools.*

intendent of schools, controls all educational activities of the parish. But parish school boards are subject to the general supervision of the state board of education, acting through the state superintendent; the organization of the whole system characterized by a centralization of the power to formulate policy and by state central control. If standards are to continue to rise and educational facilities to expand, this centralization will tend to become even more complete, for, after all, education is primarily a state function, and local areas are no longer able to bear the heavy financial burden of educational activities.

The Parish School Board

The school system of each parish functions through the parish school board,[7] whose executive and administrative duties are performed almost entirely by the parish superintendent. The former is the local policy-determining body, the latter is the executive and administrative officer of the parish school organization.

Parish school boards are composed of from five to sixteen members, elected for six year terms at congressional elections, one-third of them retiring every two years unless reelected. They are elected from the police jury wards, into which the parish is divided, one school board member for each police juror. Whenever a parish contains a municipality, the population of which is more than one-half of the population of the whole parish, the municipality has representation proportionate to its population. Where a municipality has control over its own school system, and when the limits of a ward of the parish extend beyond the limits of the city, only that part of the ward outside the city limits is represented on the parish school board. Members of school boards must be able to read and write, and they must own property within the parish valued at five hundred dollars. They receive five dollars per day when actually in the service of the parish, and are allowed traveling expenses of five cents per mile to and from the parish court house and their homes. Members must qualify within thirty days of the date of their commission, or the office is held vacant.[8] The governor fills all vacancies for the unexpired terms.

[7] *Const. 1921*, art. 12, sec. 10, and *Acts of La.*, 100 of 1922.
[8] *State v. Barham*, 187 So. 862, 178 La. 488 (1931).

Parish school boards are bodies corporate with the power to sue and be sued. They are public corporations, their functions are exclusively of a public character, and their acts are performed solely for the public benefit. The funds which they possess, administer and disburse, are public funds dedicated to a specific public purpose. School boards are state agents, a part of the state government, with only such powers and authority as are delegated to them by the state, and their relation to the state is the same as that of any other public corporation.

Each of these corporate bodies forms part of one educational system under the general supervision and control of the state board of education. Members of parish school boards are state officers even though their duties are confined to local territories.[9] Since a parish school board is constituted to act for the public welfare, the board alone must finally determine every subject committed to its discretion and judgment. The legislative and discretionary powers devolved by law on a school board cannot be delegated by it to another, but ministerial or administrative duties may be so delegated.[10] School boards are responsible for legal contracts negotiated, and judgments for debt may be made against them.[11] They are not, however, liable for the negligence of their employees.[12] Writs may issue against parish school boards from competent courts to compel them to perform their legal duties and to prohibit them from acting illegally or arbitrarily.[13]

Parish school boards may determine the number of schools to be opened,[14] their location, the number of teachers to be employed, and may select teachers from nominations made by their superintendents, providing, the majority of the members of a board may select teachers without such an endorsement.[15] School boards may employ teachers by the month or year and fix their salaries, providing, they do not discrimi-

[9] *Pressly v. School Board*, 189 So. 692 (1932); *State v. Barham*, 187 So. 862, 178 La. 488 (1931); *Bank v. Brumfield*, 124 So. 628, 11 La. App. 647 (1929); *State v. Theus*, 88 So. 870, 114 La. 1097 (1905).

[10] *Johnson v. School Board*, 140 So. 87 (1932).

[11] *Hughes v. School Board*, 145 So. 794 (1933); *Hawthorne v. School Board*, 5 La. App. 508 (1927).

[12] *Horton v. School Board*, 4 La. App. 128 (1926).

[13] *State v. School Board*, 103 So. 757, 158 La. 251 (1925).

[14] *Acts of La.*, 100 of 1922, and *Neilson v. School Board*, 12 La. App. 179 (1929).

[15] *Ibid.*, and *Brown v. School Board*, 131 So. 760 (1930); *Wall v. School Board*, 119 So. 871 (1928); *Henderson v. Shreveport*, 107 So. 189, 160 La. 860 (1926); *State v. School Board*, 103 So. 757, 158 La. 251 (1925). But *Acts of La.*, 17 of E. S. (3rd) 1934, grants full supervision and control over these activities to the State Budget Commission, consisting of the governor, the state superintendent of education, and the state treasurer.

nate as to sex in fixing such salaries. They are authorized to provide rules and regulations for their parish systems, not inconsistent with the state law or the regulations of the state board of education. They may receive land by purchase or donation for the purpose of erecting school houses, and they may provide for all other extra buildings and equipment necessary. All building and improvements contracts involving more than one thousand dollars must be let to the lowest bidder, or all bids may be rejected. Parish school boards may change the location of buildings, sell or dispose of old sites, and use the proceeds for new sites and buildings. Beginning in 1923, and every four years thereafter, school boards have had to provide for an enumeration of all educable children in their parishes between the ages of six and eighteen,[16] as a basis for the distribution of the state school fund. The parish tax assessors usually make up these lists. School board members are forbidden to take part in such a census.

School boards, in addition to the regular schools, may establish trade schools (as Delgado Trade School in New Orleans), evening schools and schools for adults (as was done during the recent drive against illiteracy), and schools and classes for exceptional and deficient children.[17] Central or high schools may be established, the latter only with the sanction of the state board of education. Practical, industrial, and agricultural courses are fostered, and the state board of education extends some financial aid to schools meeting the required standards, particularly to agricultural high schools and trade schools, although the amounts granted are not large.

Each school board elects from its own number a president and a vice-president.[18] All citations must be served on the president, or in his absence on the vice-president. The president presides at all meetings, signs all contracts for the board, and in general acts on behalf of the board. Meetings must be held during the first week of January, April, July, and October, or upon call by the president when necessary. In performing their various duties parish school boards divide themselves into committees, each supervising a special function. The most important are the executive, the finance, and the building committees.

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[16] *Acts of La.*, 129 of 1898 and 100 of 1922.
[17] *Ibid.*, 74 of 1920 and 111 of 1922.
[18] *Ibid.*, 100 of 1922.

The Parish Superintendent

The parish superintendent of education, who is the treasurer and administrative officer of the parish school board, is selected by each school board for a period of four years at a time.[19] He is not required to be a qualified voter and resident of the parish in which he is to serve. His qualifications are fixed by the state board of education and at the present are: possession of a college degree, and experience as a teacher. If at any time a parish superintendent is found incompetent, inefficient, or unworthy, he may be removed for such cause by a majority vote of the entire school board at any regular meeting, or at any special meeting after due notice.[20] Salaries range from nine hundred to approximately fifty-five hundred dollars per year and are fixed by the parish school boards.[21]

Parish superintendents are required to devote their full time to their official work.[22] They visit their schools, supervise the general educational activities of their parishes, and see that the state laws and the rules and regulations of the state board of education are observed. In addition to acting as school board treasurers, superintendents also act as school board secretaries, keeping the minutes of meetings and all other required records. They must furnish bond as required by their boards, in favor of the governor of the state, the premiums being paid out of parish school funds. They deposite school funds according to the orders of their school boards, and pay out such money only on warrants signed by the school board presidents and by themselves. Parish superintendents make full annual reports to the state board of education on or before the 15th of each August, and they make full quarterly reports to their school boards. All quarterly reports and minutes of board meetings are published in the official parish journals. Only the parish school board may dismiss teachers for cause, after a hearing, and the parish superintendent must report such cause as inefficiency, incompetency, or unworthiness.

Parish school boards may provide for and select other assistant superintendents, supervisors, stenographers, book-

[19] *Ibid.*, and *State v. Hardin*, 49 So. 490, 123 La. 786 (1909).
[20] *State v. Stanly*, 138 So. 845, 178 La. 807 (1931).
[21] *Knight v. School Board*, 114 So. 104, 164 La. 482 (1927).
[22] *Acts of La.*, 100 of 1922.

keepers, attendance officers, medical directors, and other officers and employees as are necessary.[23]

School Districts

In order to provide physical plant, special equipment, or special additional revenues for maintenance purposes, that the parish is not financially able to provide, parish school boards may create at any time school districts composed of the whole parish, of any ward or wards, or parts of wards; and with the consent of the adjoining parish school board or parish school boards, it may create school districts composed of parts of more than one parish.[24] In 1922 school boards were authorized to consolidate two or more school districts or subdistricts,[25] and in 1932 a constitutional amendment authorized large scale consolidation of school districts regardless of preexisting limitations. This permission was the result of a realization of the dangerous financial condition of the school system; and as a further indication of this condition the legislature authorized school districts to vote special taxes, no specific limit seemed to be set, for further construction activities.[26] This latter seems to have been an emergency measure.

Parish school boards are the governing bodies of all school districts created by them, with exclusive authority to order, conduct, and hold all elections in such districts.[27] Where a school district is formed of parts of more than one parish, the school board of the parish forming the largest part governs the district.

As a general rule, parish school boards appoint three local school directors for each school within their parishes.[28] These school directors represent the interested citizens and taxpayers of the school district in which the school is located, and carry out the directions of the parish school board in local matters.

In 1928 the state legislature authorized the creation of junior college districts by parish school boards, each district to consist of one parish, and no district to contain more than

[23] *Idem.*
[24] *Ibid.*, 152 of 1920. For a complete survey of the school district see Chapter on Special Municipal Corporations.
[25] *Ibid.*, 55 of 1922. Also see *Const. 1921*, art. 14, sec. 14, par. K, as amended 1932, and *Acts of La.*, 149 of 1934.
[26] *Ibid.*, 188 of 1932.
[27] *Ibid.*, 152 of 1920.
[28] *Ibid.*, 100 of 1922.

one junior college.[29] Junior colleges were then created and established at Hammond, Homer, and Monroe. The college at Hammond has since become a part of the state educational system. The one at Homer is no longer operating, leaving only the one at Monroe still in existence. Junior colleges were placed under the supervision and control of the state board of education.[30]

Municipal School Organization

In three instances, municipal school systems are complete in themselves. The cities of Lake Charles and Monroe have school systems separate and independent of their parishes.[31] The other exception to general local school organization is New Orleans with a combined city and parish school system.[32]

The Orleans Parish School Board consists of five members elected from the city at large at congressional elections for six year terms. A non-partisan election is provided for in that no party or factional descriptions or insignia are permitted on the ballots, and candidates are nominated by nominating papers. Members are required to have the same qualifications as board members in other parishes, but serve without pay. The school board must meet at least once each month, or when called by the president, who is selected from the board by the other members. All vacancies are filled by the governor for the unexpired terms. The board selects the superintendent of schools and in general has the same powers and duties as do other parish school boards. The commissioner of public finance of the city of New Orleans is the treasurer of the board, and posts a bond of fifty thousand dollars for that purpose.

In other parishes, such as Washington, East Baton Rouge, and Caddo, the school systems of their largest municipalities, such as Bogalusa, Baton Rouge, and Shreveport, are legally and technically under the parish school boards, yet they seem to enjoy a certain degree of local freedom. For instance, the schools of Bogalusa are under a committee of three trustees

[29] *Ibid.*, 178 of 1928.

[30] See Carleton, Mrs. M. A., *The Junior College in Louisiana*, a thesis, Louisiana State University, and Foote, J. M., *The Junior College Movement in Louisiana*, State Department of Education. The junior college at Monroe is now known as Northeast Center of the Louisiana State University.

[31] See Foote, J. M., *An Equalizing Fund for Public Education*, and Dart, *Revised Statutes of 1932*, Vol. II, section on Special Municipal Charters.

[32] *Acts of La.*, 100 of 1922.

(members of the parish school board and named by the board), a city commissioner of education (a popularly elected member of the city council), and a city superintendent (named by the trustees and the commissioner).[33] No actual authority has been delegated to the trustees by the parish board, yet their action on school affairs in Bogalusa is nearly always accepted by the school board of the parish. In East Baton Rouge Parish, a separate assistant superintendent has charge of the Baton Rouge school system, but he in turn is answerable to the parish superintendent and to the parish school board, and it is not at all clear just how far the city of Baton Rouge is separated from the regular parish system if at all. Much the same mutual agreement seems to prevail in other large municipalities where they are nominally under the authority of the parish school boards.

Educational Taxation and Finance, The Parishes

Parish revenues for school purposes consist of two classes: (a) those granted or appropriated by the state, (b) those levied and collected from the parish at large or from school districts.[34] Grants made by the state include federal and private subsidies and proceeds from escheats and vacant successions,[35] the state school fund derived from a part of the state general property tax and distributed to each parish on the basis of the number of educable children as shown by the last school census, and the state equalizing fund, to be described later.

Local revenues included, until November of 1934, all poll taxes,[36] and now include only fines, bond forfeitures, proceeds from the sale of timber or the income from oil, gas or mineral leases from sixteenth section school lands,[37] the parish three mill school tax,[38] and police jury appropriations. To these must be added the special taxes voted by school districts for building purposes or for extra maintenance revenue.[39]

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[33] See Foote, *op. cit.*, p. 28.
[34] *Const. 1921*, art. 12, sec 14, as amended 1930.
[35] *Puyoulet v. Gehrke*, 78 So. 571, 143 La. 815 (1918).
[36] *Const. 1921*, art. 14, sec. 12, as amended 1934.
[37] *Acts of La.*, 20 and 100 of 1922.
[38] *Const. 1921*, art. 12, sec. 15. Also see constitutional amendments of 1922, 1924, 1926 and 1928, whereby some parishes have been authorized to levy and collect as high as fifteen mills on the dollar for school purposes alone.
[39] *Acts of La.*, 100 of 1922.

It seems that reliance for educational funds has been placed on a number of varying sources of doubtful productivity, instead of adopting one or two proven sources of revenue. Even the old tried and true general property tax has not proven altogether adequate, notwithstanding the fact that Louisiana is still very largely an agricultural state and wealth is consequently invested in most instances in land or other real property. From 1920 to 1930 assessments of taxable wealth decreased in forty-seven parishes and increased in only seventeen parishes, although a net gain of $293,193,341 resulted over the entire state.[40] Seven parishes, however, accounted for $278,316,593 of this gain. This means that there was a tremendous shifting of wealth and that forty-seven parishes were no longer able to support school systems adequate thirteen years ago, but altogether inadequate today. In addition, it should be noted that education is only one of the many activities that parishes must today support. Since the parishes could not furnish the necessary funds, an attempt was made to utilize school districts. Originally, it seems, school districts were created primarily to provide the physical plant and equipment of schools, with the parish and state supplying the necessary maintenance funds.[41] But, in the 1929-1930 school session, district and ward special taxes for educational purposes amounted to $3,964,296, and in the 1930-1931 session to $3,665,099, as against approximately $11,000,000 each year from the parishes and from $5,000,000 to $6,000,000 each year from the state school fund.[42] All of which means that districts and wards were bearing this burden in addition to the heavy bond and tax burden for physical plant and equipment, which amounted to about $16,000,000 per year. The total cost of education the state over amounted to between $32,000,000 and $34,000,000 for each of the two school years above mentioned.

A second defect in the educational revenue situation, and this on the administrative side, lies in the distribution of the state school fund and other special funds of the same nature according to the number of educable persons in the state, and not according to the number of children actually attending school. This is done three times a year by the state superin-

[40] Foote, *op. cit.*, also see appendix D.
[41] *Ibid.*, p. 18.
[42] *Annual Report, State Dept. of Ed.*, 1931, pp. 33-39.

tendent of education.[43] In 1910, out of 526,268 educable children in the state, only 283,466 were actually registered in schools. In 1930, the difference was still rather large, for there were only 437,109 children actually registered in schools out of a total of 663,193 educables.[44] The large number of educables not in school is, of course, accounted for by the negro population of the state for whom there is no adequate school system, but the fact remains that the above mentioned state and special funds were not distributed on an equitable basis.

The following three principles of educational finance were enunciated as early as 1929 by the state department of education:[45] (1) education is a responsibility resting upon the state, (2) the state should guarantee some satisfactory standard or minimum of education for all local units, (3) economic resources should be taxed where they exist and the revenues therefrom should be expended where the need exists. In 1930, a modification of an equalization plan suggested by the state department of education was adopted as a constitutional amendment.[46] This modification set aside one-half of a new one-cent per gallon gasoline tax and a portion of the state severance tax on natural resources, guaranteeing, first of all, not less than twelve dollars per educable child per year from the state, and secondly, providing that at least two dollars per educable child be distributed among parishes, wards, and school districts by the state board of education in order to equalize school revenues. During the school session of 1930-31 the equalization fund amounted to $360,712, a rather small amount, yet indicating what can be done along this line.[47]

School boards are required to adopt budgets of expected revenue receipts and expenditures in August of each year, both listed and classified by items and amounts, but the budgets may not include revenues from "probable, uncertain, or contingent sources."[48] If, after the formulation of the budget, new or unexpected revenues accrue, the school board must immediately amend the budget and make provision for the

[43] *Acts of La.*, 100 of 1922.
[44] Annual Rept., *op. cit.*, pp. 84-85.
[45] Foote, *op. cit.*, p. 10.
[46] *Const. 1921*, articles 6 and 12, sec. 14, as amended 1930.
[47] Annual Rept., *op. cit.*, p. 85.
[48] *Acts of La.*, 100 of 1922, as amended by *Ibid.*, 108 of 1932 and 55 of 1934. Also see Appendix F. As a result of the latest law on this subject the State Board appears to have some little supervision over local school budgets, and *Ibid.*, 17 of E. S. (3rd) 1934, grants budgetary supervision to the State Budget Commission.

addition. The total of estimated expenditures may not exceed the total estimated revenues. These school budgets are published in the official parish journals before their final adoption by the school boards concerned.

Parish school boards operating on the fiscal year basis are required to continue as they have in the past. School boards operating on the calendar year basis are permitted to continue that practice until July 1, 1940, when they must also go on the fiscal year basis.[49] The reason for this latter concession is obvious. In the past, parish school boards operating on the calendar year have been authorized to pledge portions of their anticipated revenues and issue certificates of indebtedness, some to run as long as fifteen years before the boards are required to retire them.[50] It is doubtful if this procedure can be defended as a sound financial practice, nevertheless it has been adopted in many instances, and the legislature is simply giving the school boards affected the opportunity of retiring these debts before forcing them to go on the fiscal year basis. As an illustration of present local financial difficulties, parish school boards, by a two-thirds vote of the entire membership, may borrow money in excess of budgetary estimates in cases of emergency, the loans to be retired when revenues make such action possible.

Orleans Parish

The Orleans Parish School Board, in addition to the funds it receives from the state, may levy a tax of not more than seven mills per year on all property within New Orleans. Up to one and three-fourths mills of the tax collected may be used for buildings, construction work, equipment and physical maintenance. The balance may be used only for current operating educational expenses. If the board desires, it may issue certificates of indebtedness, pledging the one and three-fourths mill tax for their retirement, to run not more than forty years, for construction and equipment purposes, but the remainder of the tax collected may never be used for other than current operating expenses.[51]

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[49] *Ibid.*, 100 of 1922, as amended by *Ibid.*, 19 of 1926, 108 of 1932, 179 of 1932; *Watkins v. School Board* 186 So. 591, 178 La. 259 (1931).
[50] *Ibid.*, 178 of 1932.
[51] *Const. 1921*, art. 12, sec. 16, as amended 1926.

Provisions Affecting Teachers

The state board of education has been granted exclusive authority by the legislature over the examination and certification of public school teachers,[52] and it may revoke teachers' certificates upon satisfactory evidence that the holders are incompetent, unworthy, or immoral. The state board is authorized to issue life certificates to teachers who have taught satisfactorily for at least fifteen years in the public schools of Louisiana or who can satisfy other requirements of the board, and it may approve life or first grade certificates issued by the state department of education of any other state.[53] The state legislature has provided certain standards that must be met by teachers' training schools in the state, and has also exempted graduates from such schools from all teachers' examinations.[54]

No person may be appointed to teach without a contract and a certificate of a grade necessary to meet the requirements of the school.[55] Teachers are required to keep certain records and make monthly reports to their principals so that they may report to the parish superintendent, who in turn must make recapitulations of these reports to the state superintendent. All teachers, principals, and parish superintendents must turn in their reports before receiving their monthly salaries. Teachers and principals are granted considerable disciplinary authority, and are required to follow the school, parish, state board, and state educational rules and regulations. The state department of education issues hand-books from time to time as aids to teachers in their instructional work, and parish institutes are also provided for.[56]

A vital factor in ensuring qualified teachers and also keeping them in the profession, is an adequate retirement and pension system. Louisiana has been backward in this respect, but some advance has been made within recent years. Each year the state board of education is required to report statistics relative to aged and incapacitated teachers to the state legislature for their information.[57] The result is apparent, if

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[52] *Acts of La.*, 100 of 1922.
[53] *Ibid.*, 158 of 1920, as amended by *Ibid.*, 218 of 1922.
[54] *Ibid.*, 100 of 1922.
[55] *Idem.* See also *Ibid.*, 164 of 1924 for teacher probationary terms in New Orleans.
[56] *Ibid.*, 119 of 1910, and see *Hand-book for Teachers of Elementary Schools of La.*
[57] *Ibid.*, 100 of 1922.

meager. In 1932, voluntary retirement after forty years of service in any particular parish, or retirement by the school board for the same reason, was provided, and school boards were authorized to pay thereafter one-half of the salary being paid at the time of retirement.[58] It will be noted that this action is permissive and not mandatory, and certainly is not a real solution of the problem.

A more effective retirement plan was provided for New Orleans in 1910.[59] A board composed of the superintendent of schools, three members of the school board, and five members of the teaching force of New Orleans, was created to supervise the teachers' retirement fund. The school board is required to appropriate at least thirty thousand dollars per year to the credit of the fund, and the teachers participating are required to contribute small sums each month to be deducted from their salaries.[60] The lowest retirement monthly pension seems to be not less than twenty-five dollars.

Free Text-Books

In 1928 the state legislature set aside the remainder of the state severance tax fund, after excepting the special constitutional appropriations provided in the past, to supply text-books to all school children in Louisiana, both in public and private schools.[61] College and university students were excepted. The state board of education was authorized to exercise complete supervision and control over the adoption, distribution, and use of free text-books. This authority also included the right to adopt lists of basic text-books and enforce the uniform use of these books, and to contract with publishers on a competitive basis to maintain agencies for the distribution of books to parish school boards on requisition by the state board or suffer cancellation of their contracts.[62]

As a result of this action, the state has spent $2,131,247 for text-books since the plan went into effect until the end of the 1931-32 session, but now seems to have a fairly effective method of administration, inasmuch as only $598,549 was

[58] *Ibid.*, 36 of 1932.
[59] *Ibid.*, 116 of 1910, as amended by *Ibid.*, 288 of 1914, 17 of 1918, and 248 of 1928.
[60] *Ibid.*, 100 of 1922.
[61] *Ibid.*, 140 of 1922, as amended by *Ibid.*, 100 of 1928. Also see *Cochran v. La. State Board of Ed.*, 281 U. S. 370 (1930); *Ohio Oil Co. v. Conway*, 281 U. S. 146 (1930); *Borden v. La. State Board of Ed.*, 123 So. 655, 168 La. 1005 (1929).
[62] *Ibid.*, as amended by *Ibid.*, 107 of 1932.

spent on this item during the school session of 1930-31.[63] It is doubtful, though, if supplying free text-books is as necessary as maintaining adequate school systems, and it should be noted here that the state equalizing fund for the session 1930-31 was approximately only half the sum spent on free text-books for that one year.

Illiteracy

As a result of the high rate of illiteracy shown by the census of 1920, and probably because a new census would shortly be taken, provision was made to reduce the number of illiterates in Louisiana in 1928. From 1929 through 1931 a total of $296,619 was spent on this project, using, in the main, the parish school systems and teaching staff.[64] In consequence of this effort, white illiteracy of ten years of age and over dropped from 10.5 per cent of the total population in 1920 to 7.3 per cent of the total population in 1930. Negro illiteracy for the same ages dropped from 38.5 per cent in 1920 to 23.3 per cent in 1930.

The success of this plan of action was so apparent that in 1932 the state legislature made another gesture in this direction by authorizing all incorporated cities, towns, and villages, to provide by ordinance for part-time education, training, and guidance of all employed boys from fourteen to sixteen years of age, and girls from fourteen to eighteen years of age who had not completed the requirements necessary for graduation from a state accredited high school of Louisiana.[65] Supervision over the administration of such schools was vested in the parish school boards. While the plan itself is to be commended, it is doubtful if many municipalities will avail themselves of this privilege, inasmuch as the maintenance and support of the regular school systems is a real burden at present, and authorizations of this character seem to be mere idle gestures.

Miscellaneous

Louisiana has a compulsory school attendance law, but so many exemptions are allowed that there is little or no attempt to enforce it. Children between the ages of seven and

[63] Annual Rept., *op. cit.*, pp. 29 and 141.
[64] *Ibid.*, p. 19.
[65] *Acts of La.*, 70 of 1932.

fourteen years must be sent to a public or private day school.[66] The minimum session is the full school session provided. However, all mentally or physically incapacitated children; children living more than two and one-half miles from a school of suitable grade, or for whom free transportation by the parish school board is not furnished; children who have completed the elementary course of study; and children whose services are needed to support widowed mothers, are all exempted from the effect of the law.

In New Orleans, children between the ages of eight and fourteen are to be sent to a public or private school for the school year, except: those physically or mentally disabled, those who receive adequate instruction at home, and those for whom there are no adequate school facilities within twenty city blocks.[67] Teachers are required to report absences to truant officers, who are selected by the parish school boards, and the juvenile courts are authorized to deal with absentees and delinquents.

Children for whom adequate schools of suitable grade are not provided in the locality by the home parish, may attend a school in an adjoining parish or municipality. The tuition for such children is paid by the local parish school board under the supervision and final action of the state superintendent of education.[68]

Since many school children drive for long distances in their own cars to the nearest school, the state has granted the free use of ferries, bridges, and toll roads leased out by the state, parishes, or municipalities, to such students on school days.[69]

Grade school or school room libraries are authorized, by permitting parish school boards to match private gifts of not more than fifteen dollars.[70] This provision is of little real benefit now, since a majority of the schools of Louisiana are consolidated grade and high schools with school libraries supported by regular funds.

As early as 1886, provision was made to send high-school graduates who could not pay their own way to the state university or to other state institutions. Each police jury may

[66] *Ibid.*, 117 of 1922.
[67] *Ibid.*, 222 of 1910, as amended by *Ibid.*, 282 of 1912 and 49 of 1932.
[68] *Ibid.*, 100 of 1922, as amended by *Ibid.*, 16 of 1924 and 188 of 1934.
[69] *Idem.*
[70] *Ibid.*, 202 of 1906.

send one beneficiary cadet to Louisiana State University, and the city council of New Orleans may send one cadet from each of the seventeen wards of the city.[71] The appointees are named after competitive examinations, and preference is given to the children of war veterans.[72] Not more than $350 may be appropriated for each student. In 1902 a somewhat similar privilege was extended to female high-school graduates.[73] Each police jury may send one such student, and the commission council of New Orleans may send one student from each of the seventeen wards of the city, to Louisiana Technological Institute, Southwestern Institute, or to State Normal. The appointees are named after a competitive examination, and preference is given to the children of war veterans. The total appropriation for each female student may not exceed $250 per year.

Louisiana schools also participate in many extra-curricular activities, having for their objective the more complete socialization of the child and the instillation of a competitive spirit. Four-"H" Clubs exist in every parish, parish rallies, multi-parish rallies and fairs, and state rallies and fairs are bringing both children and adults of the state into closer contact with one another. Parish agents and home demonstration agents take the schoolroom into the home. In one sense this is all necessary, for the schools in rural areas are nearly always community centers and of community interest, but in view of the present financial situation of both state and local governments, great care should be exercised in seeing that the school system itself does not suffer from lack of funds in order that these activities may be continued.

Conclusion

Three main conclusions may be drawn as a result of this study of the educational system of Louisiana, two financial in character, the third administrative.

In the first place, the function of education is primarily one for the state to handle. An adequate and comprehensive educational system fosters an enlightened and interested citizenry, and hence it has become the foundation of the state itself. Under existing conditions it would hardly be wise to

[71] *Ibid.*, 100 of 1886.
[72] *Ibid.*, 197 of 1932.
[73] *Ibid.*, 158 of 1902, as amended by *Ibid.*, 196 of 1932.

advocate that the state both operate and support the entire system, although that seems to be the only logical outcome of the present situation.[74] It is possible, however, to suggest that actual operating expenses be paid by the state, with the parishes and their subdivisions providing the physical plant and equipment,[75] consolidating school districts wherever possible, and using the parish as the real unit instead of the district. This plan would be quite practicable since municipalities on the whole are subject to parish school boards and could aid the rural areas in a financial way.

An analysis of the figures in the above section on finance seems to support such a plan, inasmuch as it is shown that the local school areas are carrying a heavy operating burden in addition to that imposed for physical plant and equipment, and the state seems to be shirking the part it was originally supposed to play. It appears that the state has already realized the inequalities of the present system by providing an equalizing fund for the poorer parishes and school areas.[76]

The second conclusion has to do with local school consolidation. Wherever possible, all parishes should consolidate their school districts into one area, or, if that is not convenient, attempt consolidations so that not more than five school districts at the most exist, with consolidated grade and high schools combined in strategic positions within each parish,[77] and transporting the school children by bus to and from their homes and the schools.[78] A three thousand mile hard road system is already assured the state, and other state and par-

[74] North Carolina has already taken over all the schools of the state, although in that case it was necessary in order to prevent the local areas from defaulting on their obligations and thus impairing the credit of the state. In Louisiana, the credit of both state and local areas is about the same in each case, so the state has little to gain by adopting the Nerth Carolina procedure. See also the Griffinhagen Report to the Illinois State Legislature on Local Government, and a report by the same group on Education in Texas.

[75] As has already been pointed out before, the original arrangement seems to have been that school districts supply the necessary physical plant and equipment, the parish to supply as much operating revenue as possible, with the state making up the necessary difference. When the state failed the parishes simply turned to the school districts, thus placing an added burden on the latter.

[76] The State of Louisiana has continuously followed a policy of state aid to local areas for school purposes, but has never accepted any real responsibility. See the latest move as contained in *Acts of La.*, 54, 75, and 76 of 1934, providing a flexible system of state aid.

[77] Foote, J. M., *A Financial and Administrative Study*, pp. 61-79. Appendix A shows that nine parishes have consolidated their school systems into a school district composed of the parish. Six parishes have not more than two school districts each. Many of the schools themselves are consolidated grade and high schools. Compare, for instance, St. Landry and Madison parishes, as to the number of school districts in each. Also see *Rept. of Assessment and Taxation Commission to Const. Convention of 1921*, p. 7, advocating parish unit system for schools and opposing school districts.

[78] *Acts of La.*, 100 of 1922, and *Horton v. School Board*, 4 La. App. 128 (1926).

ish road systems are gravelled and in such shape as to insure adequate transportation at a low cost to each parish. During the 1930-31 school session the average cost to the parishes all over the state for transporting white registered school children was $20.42 per child, a rather small amount as compared with the large sums necessary for school maintenance and operation where the consolidated systems do not exist.[79]

The wholesale adoption of this plan all over the state will take some time, for local petty prejudices and other local difficulties will not be overcome immediately, nor will it be possible to dispose of the present plant and equipment of the smaller areas to the immediate advantage of the larger areas.

The third recommendation is in line with the proposal that, since the state supervises and controls the whole educational system, it should also defray the operating costs. With the state supplying a large part of the revenue for school purposes, some methods should be devised to secure the best interests of the state in its directing activities. This could be brought about by continuing to allow parish school boards to name their parish superintendents, but with this qualification; that the consent of the state superintendent be secured, and that the state superintendent be authorized to remove any parish superintendent with the consent of the state board of education. In this way local pride would be largely assuaged and at the same time parish superintendents would be responsible to the state officer entrusted with directing the educational activities of the state. Parish school boards would still continue to exist, with, perhaps, two major functions: (1) to supervise the locally furnished plant and equipment, and (2) to act as connecting links between the state organization and the local population.

If these recommendations were adopted there is little doubt but that more adequate and finer school facilities at a lower operating cost, both to state and local areas, would result, and that a system already financially undermined and with constantly decreasing revenues would enjoy a new lease on life.

[79] Annual Rept., *op. cit.*, p. 111.

CHAPTER XIII

Highways, Roads, Streets, and Improvements

Highways, roads, and streets were formerly of local concern and were locally supported, a fact pointed out in a previous chapter of this study. The parish was made the primary unit for all road purposes, its jurisdiction extending to the inclusion of all unincorporated communities, and to many incorporated municipalities not excepted from parochial control in this respect by their charters. Of course, this provision did not prohibit any municipality from adding to parish thoroughfares, nor did it prohibit any municipality from providing its own local system of streets. The point is that the state delegated full authority and also full responsibility in this field of activity to the parish. Likewise, the connection of parish road systems with each other, and the planning of road systems involving two or more parishes, was a problem to be solved by the parishes concerned. It is true that the board of state engineers frequently acted in an advisory capacity, especially when levee and drainage areas figured in plans for road systems, but it was not until after the adoption of the Constitution of 1898 that the state made any serious attempt to provide a system of state highways.[1]

After 1910, public thoroughfares throughout Louisiana might be considered as falling into four classes: state highways, parish highways or roads, road district systems, and streets and sidewalks of municipalities. As might be expected, this arrangement eventually proved unsatisfactory, for the state highway system was superimposed upon the more important parish roads, and parishes were required to advance considerable financial aid for its support, road district systems were in reality only parts of parish systems, parishes were, in nearly every case, responsible for through thoroughfares in municipalities, with the result that parishes still supported almost entirely all roads and highways throughout the state, a tremendous financial burden. Realizing the extent of parish responsibility under this arrangement, neither the state nor interested persons felt justified in pushing the construction and maintenance of an adequate state highway system. For these reasons no real attempt was made to accom-

[1] See *Acts of La.*, 14 of 1910, and *Const. 1913*, art. 291.

plish much in this field until the Constitution of 1921 was being formulated, and it was at this time that the basis of the present highway organization of Louisiana was laid.

Public Thoroughfares

All roads and highways in the state that have been opened up, laid out, or provided for by any act of the legislature; or by the order of any police jury; or which have been or which shall be maintained for a period of three years by police juries, are public roads or highways. Also, all roads laid out along rivers and bayous by landowners whose property fronts on such streams, are public in character by virtue of a servitude imposed by the civil code of the state.[2]

The Organization and Administration of Public Highways, Roads, and Streets, The State Highway System

The Constitution of 1921 provided for the establishment and maintenance of a system of hard-surfaced state highways and bridges under the temporary supervision of the board of state engineers, and for a general highway fund for their construction and maintenance.[3] The board has been superseded in this respect by the state highway commission; three persons appointed by the governor for over-lapping terms and confirmed by the senate, and responsible to the governor.

The state highway system now consists of approximately one thousand three hundred twenty-five routes designated as such by acts of the legislature, all rural free delivery mail routes not already incorporated in the state highway system, and all other duly constituted public roads. The highway commission is also authorized to assume immediate control and maintain all hard-surfaced public roads and highways constructed by parishes, road districts, and municipalities.[4] This does not mean that the highway commission is bound to accept all portions of such thoroughfares, for the statute intended that the commission take charge of those falling within the classes provided by the act and give them

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[2] *R. S.*, sec. 3368; *Acts of La.*, 220 of 1914; *Ruch v. N. O.*, 9 So. 473, 48 La. Ann. 275 (1891); *Pecot v. Police Jury*, 6 So. 677, 41 La. Ann. 706 (1889); *Frierson v. Police Jury*, 107 So. 709, 160 La. 957 (1926); *Powell v. Porter*, 135 So. 24, 172 La. 681 (1931); *Elliott v. Police Jury*, 132 So. 368, 15 La. App. 542 (1931).

[3] See art. 6, sec. 19, as amended 1926, and sec. 21.

[4] *Acts of La.*, 95 of E. S. 1921, as amended by *Ibid.*, 286 of 1924, 330 of 1926, 294 of 1928, 15 of E. S. 1930, and 74 of 1932.

preference in building the general system as outlined.[5] Neither does this statute mean that the selection of a municipal street as part of the state system, and its control by the highway commission, divests it of its character as a municipal street or deprives the municipality of the right to pave it.[6] The state system really consists of two divisions; the primary division consisting of the hard-surfaced or paved portions, and the secondary division consisting of the graveled portions. In connection with this second division, the commission is authorized to take over public roads as part of the state highway system, and improve and maintain them.[7]

The highway commission has authority to acquire (by expropriation or otherwise) rights of way and property necessary for the purpose of building and maintaining highways. At the outset the state legislature was still somewhat dubious as to the state supporting in its entirety a highway system, so it made provision for parochial, road district, and municipal participation in the costs of such a project. The commission was authorized to require parishes, cities, towns, villages, and road districts to contribute certain proportions of the costs of constructing highways and bridges; provided that parishes which had completed roads taken as a part of the state system should be given credit for the mileage completed and accepted by the commission as against the sums which they might be called upon to contribute in the future.[8] The exception was also made that parishes, municipalities, and road districts could not be charged the whole cost or any part for the construction of bridges over navigable streams.[9] In 1928, however, all parishes were relieved of any financial obligation for the future costs of state highways, thus placing the burden directly on the state.[10] Cities, towns, and villages are likewise required to petition for, and then bear the extra costs, where they want the state highway constructed through their limits to be of a greater width or of a better material than that prescribed by the commission.[11] Provision was also made for state aid to parishes, municipalities, and road dis-

[5] *Claiborne v. La. Highway Commission*, 98 So. 172, 154 La. 748 (1923).
[6] *Delahoussaye v. Trustees*, 108 So. 152, 157 La. 782 (1925).
[7] *Acts of La., 74 of 1932.* For an explanation of the organization and activities of the Highway Commission see *Annual Reports*, 1921-1932.
[8] *Ibid.*, 95 of E. S. 1921.
[9] *Talbot v. La. Highway Commission*, 106 So. 877, 159 La. 909 (1925); *Claiborne v. Commission*, supra.
[10] *Acts of La.*, 10 of E. S. 1928.
[11] *Ibid.*, 95 of E. S. 1921, as amended by *Ibid.*, 328 of 1926.

tricts in order to improve their systems, the subdivision to pay one-fourth of the cost, state and federal funds to care for the rest; but this aid is only granted when the commission feels sure that the particular local area can and will pay its share of the cost of the improvement.[12] In order to carry out this latter purpose, the supervisor of public accounts and the highway commission have prescribed a somewhat general and uniform system of road accounting for all parishes, and the commission is authorized to call on any parish at any time for a full and complete statement of all accounts and expenditures for road and bridge purposes during the period for which the report is requested.[13]

Parish Roads and Road Districts

At the present time parishes are responsible only for those roads and highways within their territorial limits which have not been designated as state highways. Because of this, parish systems are, in a sense, separate and independent of the state highway system, although the board of state engineers has, in the past, advised and assisted parishes, at their request, so as to create a uniform highway system throughout the state.[14]

Police juries are vested with supreme authority in all matters respecting the location, construction, and maintenance of roads and highways within their jurisdictions.[15] They are authorized to pass all necessary ordinances relating to roads, bridges, and their drainage, and to impose fines and penalties in order to enforce them.[16] Parish engineers, appointed and paid by the police juries, are technical advisors for all road, bridge, and drainage work of parishes. The supervision of these activities is usually entrusted by each police jury to a road committee made up of jury members, and the committee in turn acts through the parish road supervisor, who is likewise appointed by and responsible to the police jury. For parish-wide administrative purposes police juries divide their parishes into road districts (not to be confused with road districts created to levy special taxes or to

[12] *Ibid.*, and *O'Bierne v. Police Jury*, 92 So. 709, 151 La. 1088 (1922).
[13] *Idem.*
[14] *Ibid.*, 95 of E. S. 1921.
[15] *R. S.*, sec. 2743; *Barrow v. Helper*, 34 La. Ann. 862 (1882); *Donaldson v. Police Jury*, 109 So. 84, 161 La. 471 (1926).
[16] *Ibid.*, sec. 3864; *West Baton Rouge v. Robertson*, 8 La. Ann. 69 (1853).

issue special bonds for special road purposes), each district usually composed of an entire police jury ward,[17] and appoint a road overseer for each district.[18] In former times, the road overseer decided on the work to be done by each resident of his district, informed all residents of the duties expected of them during the year, and supervised the general activities of his district. Suits might be brought and judgments obtained in district courts against persons neglecting or refusing to work on the public roads.[19] This method proved not only inadequate but also troublesome and is no longer used, although still legal. Parishes on the parish unit basis, however, still use the system described for the administration of parish-wide road activities, but a paid staff does all the work.

Property needed for building, repairing, or maintaining highways may be acquired by police juries by expropriation, donation, gift, or purchase.[20] All road and bridge construction and maintenance revenues and expenditures, both parish and district, must be provided for by police juries in their annual budgets.[21]

Each new road is laid out by a jury of not less than six freeholding inhabitants of the vicinity selected by the police jury.[22] Such roads are required to be laid out as much to the advantage of property owners, and as little to their disadvantage, as possible. Damages are calculated by the jury, and the parish, or road district, pays the amount assessed.[23] It is not necessary that the public authority actually own the land to make a road a public road, for it is sufficient if the public authority simply owns the servitude of passage over the land.[24] Dissatisfied property owners may appeal to their district courts for a review of the damages awarded.[25] The roads established in this manner must be not less than twenty-five feet nor more than one hundred feet wide,[26] and police juries are authorized to contract for the work involved in opening up roads after the route is laid by the freeholders' jury.[27] If

[17] *R. S.*, sec. 3373; *Acts of La.*, 117 of 1896, as amended by *Ibid.*, 203 of 1902.
[18] *Ibid.*, secs., 3375-3384.
[19] *State v. Sikes*, 11 So. 588, 44 La. Ann. 949 (1892).
[20] *Acts of La.*, 108 of 1926.
[21] *Ibid.*, 24 of 1870 and 118 of E. S. 1921. Also see Appendix I.
[22] *R. S.*, sec. 3369; *DeMoss v. Police Jury*, 118 So. 700, 167 La. 88 (1928); *Fuselier v. Police Jury*, 38 So. 597, 109 La. 551 (1903); *Knox v. Police Jury*, 27 La. Ann. 204 (1875).
[23] *Police Jury v. D'Hemecourt*, 7 Rob. 509 (1844).
[24] *Police Jury v. Thibodeaux*, 104 So. 372, 158 La. 573 (1925).
[25] *R. S.* sec. 3370; *Maggini's v. Police Jury*, 30 So. 846, 106 La. 293 (1901); Police Jury *v. Kidder*, 4 La. App. 296 (1925).
[26] *Ibid.*, sec. 3371; *Acts of La.*, 26 of 1894.
[27] *Ibid.*, sec. 3389.

this procedure is followed, strictly and to the letter, the courts of the state will not interfere with police jury discretion as to the general direction and position of roads.[28]

There are four methods by which parish roads and bridges may be constructed and maintained.

First, all able-bodied citizens of the parish may be required to donate their labor for not more than twelve days each year. This method, described above, is antiquated and hardly ever used.

The second method is the use of convict labor, which is found in a varying extent in a few of the parishes, but which naturally cannot be relied upon.[29]

The third method is by voting special parish-wide taxes or bonds, or both, for road and bridge construction and maintenance.[30] This method would seem to be the most advantageous of all, inasmuch as the entire road system of the parish would be of a unified character, but either because of local fears that one area would be required to furnish revenues to build and maintain roads in other less fortunate areas, or because of the fact that constitutional tax and bond limitations are too rigid for some parishes to acquire an adequate road system by this method, it is found to prevail in only eight parishes.[31]

The fourth and probably the most unsatisfactory method, from the administrative point of view, but followed by a very large majority of the parishes, is the one by which police juries may create road districts, subroad districts, and consolidated road districts, for the purpose of levying special taxes and issuing special bonds for road construction and maintenance.[32]

Police juries may create road districts, subroad districts, and consolidated road districts, either on their own initiative or by request of one-fourth of the taxpayers petitioning for a proposed district. No district may be composed of the whole area of a parish, but it may be composed of territory wholly within a parish or partly within two or more parishes. Such districts are political corporations of the state with all nec-

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[28] *Fuselier v. Police Jury*, 88 So. 597, 109 La. 561 (1908).
[29] *Acts of La.*, 204 of 1908, and 200 of 1926.
[30] *Ibid.*, 46 of E. S. 1921.
[31] See Appendix A.
[32] *Acts of La.*, 118 of E. S. 1921, as amended through 1932.

essary powers and obligations.[33] Taxation within these districts may be of two kinds: one for improving or maintaining roads by a fixed millage not to exceed five mills on the dollar and not to run for more than ten years (which may be pledged and borrowed against) voted by the qualified taxpayers; the other, must be levied annually by the police jury to retire the principal and interest of special bonds voted for the same purpose and in the same manner. These taxes may be levied over the entire parish, or in the special districts just described. The total bonded debt of any given area, however, may not exceed ten per cent of the assessed valuation of all taxable property within that area; and the total special taxes in any one district for the purposes of that district may not exceed twenty-five mills on the dollar.

The work of road districts is carried on under the direction of road overseers who are appointed, one for each district, by the police jury of the parish, and who in turn are under the parish road supervisor. As a concession to the local taxpayers the police jury sometimes appoints a board of supervisors of three members which acts as the agent of the police jury in questions of policy.

Police juries may close public roads and abandon them when, in their discretion, they are no longer necessary.[34] The ownership of the soil embraced in such roads reverts to the adjacent property owners.

When levee commissioners have failed to rebuild roads destroyed or damaged as a result of work on levees, police juries may build or rebuild the damaged portions and charge the costs to the levee district.[35] Police juries may construct hard-surfaced roads in or through municipalities and may appropriate not more than fifty per cent of the total cost out of parish funds.[36] Police juries are also authorized to improve streets in unincorporated towns when petitioned to do so by a majority of the abutting property owners, the total cost of the project to be assumed by the property owners on the basis of the front footage of their property.[37]

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[33] See chapter on Special Municipal Corporations for a complete survey of types of road districts, and the chapters on Taxation and Finance for special taxes and special bonds.

[34] *Acts of La.*, 151 of 1910; *Metairie Park v. Currie*, 122 So. 859, 168 La. 588 (1929).

[35] *Ibid.*, 50 of 1920.

[36] *Ibid.*, 65 of E. S. 1921.

[37] *Ibid.*, 177 of 1932.

As a means of regulating traffic on parish highways, police juries may authorize their sheriffs to appoint parish traffic officers to patrol the roads and highways within their limits.[38] These officers are vested with general police powers and are paid monthly salaries out of parish funds by the police juries.

Municipal Streets, Sidewalks, and Their Improvements

Municipal streets are laid out and dedicated to the public and are then provided for by the governing bodies of all incorporated cities, towns, and villages. This is required by joint action of the mayor and council of each of the municipalities under either of the two mayor council forms of government or under special charter,[39] by the commission council under either of the two commission forms of government,[40] or by the commission council under the commission manager form of government, which to date no municipality has adopted.[41]

Street and alley maintenance costs are in nearly every case borne by the municipality, although special assessments may be levied against property to defray the costs either in whole or in part. Municipal revenues for these purposes may be derived from the general tax for municipal purposes, from special taxes, or from the following source. When a police jury levies and assesses a parish-wide tax for road purposes, and the tax is collected in municipal corporations responsible for their own road and highway work, the tax minus the expense of collection must be turned over to the latter for highway and road work within their corporate limits.[42] Many municipalities maintain their streets and alleys in repair with their own paid staff of workers, others let the work on a contract basis.

Street and alley construction costs are in nearly every instance borne by the abutting property owners in proportion to the front footage of their property, although in a number of cases, as are hereafter shown, the municipality may share in the cost. The methods of constructing streets, alleys, and

[38] *Ibid.*, 260 of 1926. So far as the writer can determine, no parish has used this authorization.
[39] *Ibid.*, 10 of 1896 and 136 of 1898, as amended.
[40] *Ibid.*, 302 of 1910 and 207 of 1912.
[41] *Ibid.*, 160 of 1918.
[42] *Ibid.*, 24 of 1870.

other like improvements are seven in number, and are based in part on a classification of municipalities according to their populations and in part on a classification according to the forms of government that they possess. As in maintenance work, many municipalities do their own constructing of streets, alleys, and other like improvements, through their permanently organized staff of workers; others let the work on a contract basis.

All municipalities of populations of one thousand or more, or incorporated parish seats, may pave or improve streets and alleys of not less than one block in length when petitioned by not less than one-half of the interested taxpayers, in number and in amount of property owned.[43] The abutting owners are required to pay two-thirds of the cost according to the front footage of their lots, and the municipality pays the other third.

Municipalities of one hundred fifty population or more may pave or improve their streets and alleys of not less than one block in length when petitioned by a majority in number and amount of property owned of the interested taxpayers, or they may do so on the initiative of their governing authorities after notice by registered mail to those interested and without a written protest by fifty per cent in number and amount of property owned of those interested.[44] The municipality may defray the entire cost or only a part. In the latter case the interested property owners are assessed according to the front footage of their lots on the improvement.

All municipal corporations, when petitioned by not less than sixty per cent of the resident abutting property owners in number and amount of property owned, may make street improvements and assess the entire cost against the abutting property in proportion to the front footage of the lots.[45]

Municipal corporations with populations of five hundred or more may make street improvements when petitioned by a majority of the interested front footage of property involved, and they may assess the entire cost against the property on

[43] *Ibid.*, 10 of 1896, as amended by *Ibid.*, 241 of 1912, 210 of 1914, and 25 of 1916; *Shreveport v. Traction Co.*, 64 So. 414, 184 La., 568 (1914); *State v. Thomas*, 115 So. 638, 165 La. 412 (1928).

[44] *Ibid*, 136 of 1898, as amended by *Ibid.*, 181 of 1904, 289 of 1928, 2 of E. S. 1929, and 214 of 1932.

[45] *Ibid.*, 27 of E. S. 1915, as amended by *Ibid.*, 107 and 26 of 1916; *Marston v. Patterson*, 6 La. App. 274 (1927).

that basis.[46] The municipality may, however, pay the cost of the proportion that the net area of street intersections bears to the total area of the street, alley, or curbing being improved.

The fifth method allows comprehensive project work or complete unit improvement work. When petitioned by sixty per cent of the property owners whose lots front on the proposed project, any municipality with a population between one thousand and one hundred thousand may complete the improvement, and the entire cost is borne by the abutting owners in proportion to the front footage of their lots on the improvement.[47]

The sixth method is a modification of method four. The governing authorities of municipalities with populations of one thousand or more, or of incorporated parish seats, have the power, on their own initiative, to order the improvement without any petition by the interested property owners, and may decide which of the two methods of defraying the cost of the project will be followed.[48]

The seventh method has to do with streets fronting or bordering on a canal, and affects only those municipalities faced with this problem. Municipal corporations with populations of one thousand or more, when petitioned by sixty per cent of the owners whose property fronts on the canal, may carry out the proposed improvement and assess the entire cost of the project against the property situated on the land side of the street along the canal.[49]

As far as sidewalks are concerned, one provision seems to suffice for nearly all municipalities of the state. Any municipality with a population of one thousand or more, or any village or town with a population of three hundred or more, in which a state approved high school is situated, with the consent of sixty per cent of the abutting property owners affected, may carry out the proposed sidewalk project, and the entire cost is borne by the interested property in proportion to the front footage involved.[50] Sidewalks may, however, also

[46] *Ibid.*, 168 of 1926, as amended by *Ibid.*, 206 of 1928; *State v. Shreveport*, 142 So. 641 (1932).
[47] *Ibid.*, 187 of 1920, as amended by *Ibid.*, 115 of 1922.
[48] *Ibid.*, 280 of 1928.
[49] *Ibid.*, 288 of 1928.
[50] *Ibid.*, 147 of 1902, as amended by *Ibid.*, 49 of 1912, 16 of 1922, and 322 of 1926. Also see *Judice v. Scott Village*, 121 So. 592, 168 La. 111 (1929). It is interesting to note here that in 1934 all municipalities were authorized by *Acts of La.*, 92 of 1934, to construct and improve both streets and alleys, and side-walks, and levy assessments to pay the cost.

be paved by general taxation of the property owners of the whole municipality, or by individual voluntary action.

When streets, alleys, sidewalks, and other improvements are made and property is damaged, the amount due the property owner is determined after a deduction is made of all special benefits and the enhancement of the value of the property concerned.[51] Unless the owner claims damages within one year after the completion of the improvement, the rule of prescription applies and no court has jurisdiction to hear the case.

New Orleans is expressly excepted from the effect of the above provisions, but on the whole, the same general methods of providing for streets, alleys, curbing, and sidewalks are found to prevail,[52] with, however, one exception. Thirty-three per cent of the abutting property owners on any proposed improvement may go so far as to suggest the type, the material, and other specifications, and make other pertinent suggestions to the city council. The council, however, is not bound to follow these suggestions, and is even authorized to use a large degree of discretion in such cases.

In general, the following principles will be found to prevail in suits involving special assessments or taxes for street and other like improvements. On the whole, the courts of the state take the attitude that statutes giving municipalities the power to tax for municipal improvements should be strictly construed; and municipal corporations seeking to levy such taxes should comply with all the requirements of the statute creating the right.[53] Likewise, the courts declare that a local assessment for street improvements is a tax imposed without regard to the assent or dissent of property owners, and this power should never be abused.[54] But the necessity of local assessments is not a judicial question, and the courts will not interfere with the discretion of municipal authorities levying such assessments unless there is plain abuse of power.[55] Insofar as letting contracts to the lowest responsible bidder for these improvements is concerned, the municipal council has the power and discretion to determine the responsibility of

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[51] *Ibid.*, 165 of 1916.
[52] See *Ibid.*, 159 of 1912, as amended by *Ibid.*, 28 of 1914, 69 of 1916, 105 of E. S. 1921, and 346 of 1926.
[53] *Minden v. Glass*, 61 So. 874, 132 La. 927 (1913).
[54] *Minden v. Stewart*, 77 So. 118, 142 La. 467 (1917).
[55] *Fourmy v. Franklin*, 52 So. 249, 126 La. 151 (1910).

the bidder, and whether the security he offers is satisfactory; and it may reject all bids if necessary. But the council may not arbitrarily select a bidder, rejecting others which are lower and made by persons more responsible and better qualified to do the work.[56]

Municipal corporations with populations between twenty-five thousand and seventy-five thousand may exchange property in order to construct streets and alleys only after a majority of the taxpayers have approved such action.[57] All other municipalities may exchange property for this purpose by action of their governing authorities alone.[58]

Roads, streets, and alleys may be abandoned and their dedication to public use may be revoked and set aside by action of the municipal governing bodies.[59] In such cases the land involved reverts to the adjacent property owners.

In case local revenues fail or are inadequate, villages, towns, and cities may require all able-bodied men residing within the corporate limits to work on the streets, under the supervision of the street commissioner, for not more than eight days in any one year. The persons involved may escape this duty by paying a sum, not exceeding four dollars per year as fixed by an ordinance, to be spent on the streets.[60] This provision is seldom enforced except in the smaller towns and villages. For the most part, each municipality has its own street maintenance or construction force, or else it contracts with private individuals or corporations for work of this character, the property owners paying the necessary costs where the work is too expensive to be paid for by the municipality.

All municipal areas with populations of twenty-five hundred or more, when petitioned by fifty per cent of the abutting property owners affected, may install special lighting or illuminating systems.[61] The entire cost of installation is borne by the abutting property, but after the installation is completed the ownership of the system is vested in the municipality and the latter must operate and maintain it thereafter out of municipal funds.

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[56] *Ibid.*, and *Lumber Co. v. Bunkie*, 99 So. 687, 155 La. 892 (1924).
[57] *Acts of La.*, 81 of 1914.
[58] *Ibid.*, 88 of 1916; *Wilkie v. Walmsley*, 136 So. 296, 178 La. 141 (1931).
[59] *Ibid.*, 151 of 1910; *State v. Hickman*, 127 So. 659, 13 La. App. 173 (1930).
[60] *Ibid.*, 17 of 1910.
[61] *Ibid.*, 289 of 1926, as amended by *Ibid.*, 72 of 1930.

Street spaces covered by railroad or street car tracks must be kept in good condition by the companies owning the trackage, and municipalities may compel this action.[62] Municipalities may likewise require railroads to aid in a financial way in constructing viaducts or sub-ways on streets crossed by the railroads, the railroad companies and the municipalities each to pay one-half of the cost.[63]

As noted in the previous section, the above general provisions do not apply to New Orleans. A special legislative act provides that cities with populations of 100,000 or more may plant trees along streets and boulevards; beautify neutral grounds in any general way; close, or fill in and cover, canals and ditches; and provide for street lighting.[64] Any or all of these may be accomplished by petition on the part of sixty per cent of the abutting property owners. The project is financed by special assessments against abutting property in proportion to front footage on the improvement. After its completion the city takes over its maintenance and operation.

Conclusion

It is, as yet, too early to predict the outcome of the recent plans for the state highway system, nor is it possible to criticise its activities to date. The plan looks forward to a hard-surfaced primary system of approximately three thousand miles and a secondary graveled system, to be paved as soon as additional funds are available, of about seven thousand miles. Its nucleus was the small and pitiful mileage of pavement, and the graveled highways, completed prior to 1928. Since then many important parish roads have been added to serve as connecting links. Provision exists for the additional incorporation in the state system of all main parish roads, to be maintained at the expense of the state. It seems impossible, in view of past conditions, to criticise the plans made for the future. The question is, will those plans be carried out? The state is aware of the problem confronting it. The local areas can only wait and hope.

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[62] *Ibid.*, 198 of 1912, as amended by *Ibid.*, 59 of 1922, and 320 of 1926; *State v L. & N.* 64 So. 926, 135 La. 14 (1914); *Vicksburg R. R. v. Monroe*, 115 So. 136, 164 La. 1031 (1927).

[63] *Ibid.*, 38 of 1924, as amended by *Ibid.*, 51 of 1928; *Shreveport v. K. C. R. R.*, 120 So. 290, 167 La. 771 (1929).

[64] *Ibid.*, 28 of 1926.

Inasmuch as the state highway system is not yet completed, both as to content and mileage, it would not be wise to criticise the work of the state in this respect except to urge that all main and important parish roads be incorporated in the state system as rapidly as conditions permit. Such action is necessary.

From 1920 to 1929, local road taxes advanced from $4,885,544, or about twenty-three per cent of total local taxes, to $7,070,461, or about seventeen per cent of total local taxes.[65] From 1929 to 1931, local road taxes decreased to the sum of $5,891,238, or about eighteen per cent of total local taxes, the lowest that item has been since 1923. This compares rather favorably with an expenditure of $15,263,904 by the state in 1931, or about forty-four per cent of total state expenditures.[66] Already, it seems, the effects of the new state highway policy are being felt.

As soon as this new state highway plan becomes a definite reality, all parishes should consolidate their local road systems into parish systems with parish-wide taxes and bond issues to care for new parish roads and those not taken over by the state. This has been accomplished in its entirety by eight parishes.[67] It has been accomplished in a modified way by sixteen parishes. On the other hand, six parishes have more than fifteen road districts each, and two parishes have more than twenty road districts each. Since 1921 the number of road districts has increased each year,[68] either because of the unwillingness of certain wealthier sections of parishes to help maintain parish roads in other poorer localities of their parishes, or because of the fact that even the rather lenient constitutional tax and bond limitations prevent a parish-wide system and force the creation of road districts for revenue purposes. In either case, the lower parish financial burden, brought about by the state taking over so many parish roads, should result in the financial ability of the parish to handle all purely local highways and roads as a parish project.

It is apparent here, as elsewhere, that there is too much special and local legislation for Louisiana municipalities.

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[65] See Appendix C.
[66] National Industrial Conference Board. *Cost of Government in the United States*, 1929-1930, p. 28.
[67] See Appendix A.
[68] See *Reports of the Supervisor of Public Accounts*, 1921-1931, pp. 1-5.

Much of this is due to the retention of special charters after general or optional charters were provided; and much of it is due to a system of classification according to population, and also according to the type of government and which form was chosen of the type provided. Special legislation can, in a sense, be justified, but seven methods of levying assessments for improvements to thoroughfares seem to carry the classification method entirely too far.

At present, there does not seem to be adequate planning for the future with respect to the relationship between state and local highway systems. It is quite true that the central authorities may confer and advise with local authorities, but aside from occasionally using financial pressure there is no method by which local road activities may be supervised and controlled with the view of seeking solutions for future needs and future problems. Since the state has realized the importance of an adequate highway transportation system, and has done much to make this a function of the state, it seems reasonable to expect the subordination of local road systems and the prejudices and whims that often go with them, to the best interests of the state at large.

The changes herein contained and proposed by the writer are based upon tendencies which may be observed prevailing in Louisiana today. If these tendencies continue, the culmination of this growth and expansion will be an adequate state highway system of primary and secondary routes, with a unified local highway system of parish roads and municipal streets under the central supervision of the state.

CHAPTER XIV

Special Municipal Corporations

The development of local government within recent years has been toward a multiplication of local areas for separate and distinct purposes. State legislation in a majority of states has authorized the creation of local districts for special purposes by a governing body on its own authority, by petition, or by popular vote. These districts are quasi-municipal in character and may buy and sell property, expropriate land,

sue and be sued in their corporate capacities, and levy taxes and issue bonds, when authorized to do so, for certain specified purposes. This movement has spread throughout the entire United States in one form or another,[1] and Louisiana has not been slow in adopting a means to fulfill special local needs.

Special districts as they now exist or may exist in Louisiana include levee, road, school, gravity drainage, artificial drainage, sewerage, irrigation, lighting, and water works districts. In five instances, road, school, gravity drainage, artificial drainage, and waterworks sub-districts may be created; and in three instances, road, school, or drainage districts or sub-districts may be consolidated. In each case, whether ordinary, sub, or consolidated, the area is a distinct entity. In addition to being divided into these special areas, it must be remembered that the parish itself may become a navigation, school or junior college district, in any one case being separate and distinct from the parish as such. Truly, this is a formidable array, for boundaries, governing authorities, and functions may and do overlap. The movement toward the creation of such districts and the growing interest concerning their powers and functions prompt the writing of a special chapter on the subject.

Perhaps the best general description of special taxing districts according to judicial opinion is the decision of the United States Supreme Court in the case of *Houck v. Drainage Dist.*,[2] the court holding the following in part: "So far as the federal constitution is concerned a state may defray the entire expense of creating, developing, and improving a political subdivision from state funds raised from general taxation—or it may apportion the burden among the municipalities in which the improvements are made—or it may create tax districts to meet authorized outlays. The state may, so far as the federal constitution is concerned, create tax districts for special improvements directly by the legislature, or may delegate their institution through court proceedings, and the propriety of such delegation is a matter for the state alone, not reviewable by the federal courts." To the two methods of creating taxing districts listed by the court in this opinion may be added one other, the creation of such districts

[1] Fairlie, J. A., and Kneier, C. M., *County Government and Administration*, pp. 477 ff.
[2] 239 U. S. 254 (1915).

by a local governing body, such as a county board or police jury, either with or without a request to do so by the local taxpayers affected. This opinion, then, with the exception of the single omission noted, covers the purposes and methods of creating special taxing districts.

In 1910 and in subsequent legislation the state legislature of Louisiana termed the special districts enumerated above political subdivisions of the state and authorized them to levy special taxes, incur debt, and issue bonds according to the law on those subjects.[3] In one respect, however, special districts, and especially so in Louisiana, usually differ from other quasi-corporations, such as parishes or counties, and resemble municipal corporations, such as cities and villages, as they are for the most part voluntary organizations established according to the will of the inhabitants or taxpayers of the district. In general, all special districts, even such as sub-drainage districts, are autonomous, and there is no more authority or reason for confusing their interests and averaging the costs of the work to be done in them than for confusing the affairs of drainage districts or school districts.[4]

Although special taxing districts in Louisiana are nearly always thought of as being rural in character, drainage districts, for instance, may be wholly rural, or partly rural and partly urban.[5] Ordinarily a district must, then, if it includes part of a municipality, also include a part of the parish outside of the municipality, otherwise the police jury would not be affected and the district would be entirely under the jurisdiction of the governing officers of the city. Again, it sometimes happens that a single area may be organized as two distinct districts for two distinct purposes, but using a common means to achieve those purposes; such as an area organized as a drainage district and as a navigation district, but using the same canal for both purposes.[6] Lastly, it may be wise to point out here that special municipal corporations in Louisiana are not to be confused with private corporations in regard to receiverships, for the constitutional and statutory provisions of the state as to receivers for private corporations

[3] *Acts of La.*, 256 of 1910, as amended for each later additional type of subdivision.
[4] *Drainage Dist. v. Cousin*, 57 So. 992, 180 La. 881 (1912).
[5] *Bernard v. Drainage Dist.*, 58 So. 498, 180 La., 687 (1912).
[6] *Idem.*

and partnerships do not extend to the appointment of receivers for public corporations.[7]

Special Taxing Districts, Levee Districts

Since the first settlement of Louisiana, and more particularly within recent years, the state has been faced with the problem of attempting to control the high-water stages of the many rivers, large and small, within her boundaries. From the very beginning this task has resolved itself into the building of high earth embankments along streams requiring such attention in order to protect the lands of the state from overflow during flood stages.

The present state-wide levee system was inaugurated by the Constitution of 1879 and was continued by the Constitutions of 1898, 1913, and, with a few minor changes, by the Constitution of 1921. Levee districts, wherever necessary, compose this system; and a levee district itself is a state agency, an artificial person, brought into existence for the purpose of discharging public duties incumbent primarily upon the state, these duties consisting of the protection of lands in the district from damages by floods and of the drainage of such lands.[8] The primary objective of a board of levee commissioners has also been stated as the protection of the property within the district from overflow as rapidly and as effectually as possible by the construction and repair of all levees, whether on river, lake, canal, or elsewhere, necessary for that purpose.[9] Since levees may sometimes be as effective in retaining surface waters within a district as well as keeping water without, it very often happens that the duties of leveeing and draining a particular area are delegated jointly to a levee district, depending upon the nature of the land and other local conditions. In such cases the district really has a dual purpose, protecting life and property by means of a levee system and a drainage system.[10]

The state legislature has created levee districts as the occasion demanded from time to time.[11] Since the legislature

[7] *DePew v. Drainage Dist.*, 105 So. 78, 158 La. 1099 (1925).
[8] *Board of Commissioners v. Pure Oil Co.*, 120 So. 378, 167 La. 801 (1928).
[9] *Koerber v. Levee Board*, 25 So. 415, 51 La. Ann. 528 (1899).
[10] *J. H. Hines Co. v. Guillott*, 105 So. 598, 159 La. 488 (1925); *Snowden v. Levee and Drainage Dist.*, 134 So. 389, 172 La. 447 (1931).
[11] *Const. 1921, art. 16.* Also see *Acts of La.*, 78 of 1876, 46 of 1877, 59 of 1886, 77 of 1888, 93 of 1890, 97 of 1890, 74 of 1892, 18 of 1892, 108 of 1892, 160 of 1900, 109 of 1904, 80 of 1906, etc.

is the creating body it is also the repealing or extinguishing authority, for the legislature having created a levee district for public purposes, may revoke the grants made to it, by abolishing the district or by withdrawing the grants, provided, that in so doing, it does not interfere with rights acquired by third persons.[12] On the other hand, a board of commissioners of a levee district cannot legally become *functus officio* as long as bonds are outstanding against the district.[13] From this it may be gathered that the creating authority of levee districts, the state legislature, may also abolish them, but such public corporations are prohibited from becoming extinct of their own volition so long as there is an outstanding debt, regardless of whether the objects for which the districts had been created had been realized or not.

The affairs of each district are administered by a board of levee commissioners appointed by the governor, one commissioner from each parish within the district.[14] Commissioners receive their expenses but no other compensation.

Levee districts and their governing officers are bodies politic, entirely separate and distinct from the state, and have the right to sue and be sued in their corporate names.[15] Since the purposes for which they are created are public in character they may appropriate private property for public use,[16] but when the public safety requires the taking of private property in an emergency, levee districts may do so, when authorized, under the police power of the state, although ordinarily such property should be taken for public use only by means of regular judicial proceedings.[17] Almost from the very beginning of the present levee system, certain waste lands belonging to the state were transferred outright to the levee districts in which they were situated, and the corporations were authorized to sell, mortgage, lease, or otherwise dispose of the lands, the proceeds of which were to be used in helping to defray the costs of the improvements under-

[12] *Levee Dist. v. Pure Oil Co.*, 120 So. 873, 167 La. 801 (1928).
[13] *Snowden v. Levee and Drainage Dist.*, 134 So. 389, 172 La. 447 (1931).
[14] See *Acts of La.*, 8 of 1888; *United States v. Boarman*, 260 U. S. 745 (1916); *Dehon v. Levee Board*, 34 So. 770, 110 La. 767 (1903).
[15] *Const. 1921*, art. 16; *Board of Commissioners v. Pure Oil Co.*, 120 So. 873, 167 La. 801 (1928); *Board of Commissioners v. Blythe*, 118 So. 150, 163 La. 929 (1927); *Board of Commissioners v. Whitney Bank*, 129 So. 658, 171 La. 28 (1930); *Fisher v. Steele*, 1 So. 882, 39 La. Ann. 447 (1887); *State v. Standard Oil Co.*, 118 So. 867, 164 La. 834 (1927).
[16] *New Orleans Land Co. v. Board of Commissioners*, 132 So. 121, 171 La. 718 (1930); *Dalche v. Board of Commissioners*, 49 F. (2d) 874 (1931).
[17] *Koerber v. Levee Board*, 25 So. 415, 51 La. Ann. 523 (1899).

taken.[18] Within recent years the revenue derived from the disposal of these lands has steadily increased, due to the discovery of oil, sulphur, oyster shell for road building, and other natural resources.

Commissioners may levy taxes (district, levee, acreage, railroad, and mileage) and local assessments,[19] may incur debt and issue bonds under certain restrictions and requirements, appoint levee inspectors and other district officers, and in general manage the affairs of the district.[20] In exercising these powers boards of commissioners have considerable discretion so long as they act within the powers delegated to them and not in violation of constitutional provisions, and the courts of the state will not disturb them in carrying out their duties except in clear cases of abuse of power.[21]

In addition to revenues derived from lands, taxes and bonds, levee districts are also aided by the United States acting in a separate capacity, through the Mississippi Flood Control Plan rapidly nearing completion.[22] For this reason the future of levee districts in Louisiana cannot be clearly foreseen, for the federal government may eventually take over the flood control problem in its entirety, it may take over flood control only along navigable streams, or it may merely continue its present policy of aiding only where unified action is necessary.

Since 1921 the Orleans Levee District has been authorized to undertake and complete a project which seems somewhat alien to the character of the ordinary levee district. For this reason a brief description of the project may be of value in showing the trend of development of special municipal corporations in Louisiana today. Aside from existing statutory duties and grants of authority the board of commissioners of the district was authorized by the *Constitution of 1921,* Article 16, as amended by Act 106 of 1922 and by Act 292 of 1928, to construct and maintain levees and embankments in the bed of Lake Pontchartrain in order to pro-

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[18] See *Acts of La.,* 95 of 1890, 74 of 1892, 160 of 1900, 268 of 1908, and *United States v. Boarman,* 260 U. S. 745 (1916).

[19] See Chapter on Taxation and Finance.

[20] See *Acts of La.,* 60 of 1886, 8 of 1888, 65 of 1894, 188 of 1914, 179 of 1914, 206 of 1914, 42 of E. S. 1917, 70 of 1922, and 117 of 1928. See also *Henry Charnock v. Levee Dist.,* 38 La. Ann. 828 (1886); *J. H. Hines Co. v. Guillott,* 95 So. 794, 158 La. 819 (1923) and 105 So. 598, 159 La. 488 (1925); *J. M. Burguieres Co. v. Peterman,* 88 So. 756, 146 La. 439 (1920); *Munson v. Board of Commissioners,* 8 So. 906, 43 La. Ann. 15 (1891).

[21] *J. H. Hines Co. v. Guillott,* 95 So. 794, 158 La. 819 (1923).

[22] 33 *U. S. C. A.,* secs. 702a-702m, 704 (1928).

tect the city of New Orleans, and, in addition, was authorized to locate a concrete seawall or revetment three miles from the shoreline of the lake and to fill in and reclaim the intervening area. Authority was also granted to the board to issue bonds in order to carry out the project, and to levy taxes for their eventual retirement. However, the amendment of 1928 provided that the reclaimed land should be transformed into a residential district, with boulevards, recreation parks, playgrounds, and other places of public use, and it was also intended that the improvement should, as much as possible, pay for itself.

In 1930 a test case was instituted and the state supreme court upheld the validity of the bonds issued by the district.[23] In the same year another case arose concerning the action of the board in appropriating for the use of the district some lake bottom and privately owned adjacent swamp lands, and the court also upheld that action, declaring that improving the lake front on Pontchartrain and providing for the safety, health, and welfare of the inhabitants was a public benefit, notwithstanding the intention of the board to sell the improved lands to pay for the project and notwithstanding the possibility of pecuniary benefit.[24]

The following year a case arose, this time in the federal district court under the Fourteenth Amendment to the United States Constitution, the main point at issue seeming to be whether the object in appropriating and reclaiming the land in question was public in character. The court first held that in this case it could consider the circumstances peculiar to the locality, that it was common knowledge that the land adjacent to New Orleans on Lake Pontchartrain was of low swampy character and not susceptible to human habitation or cultivation without artificial reclamation. Continuing, the court declared that the action of the state legislature and the approval of the people of the state through a constitutional amendment, to appropriate the land under an improvement project, was conclusive evidence of the necessity of taking the land, and that the federal courts should regard with great respect the judgment of state courts as to what are public uses. The state, therefore, had a right under the police pow-

[23] *Board of Commissioners v. Whitney Bank*, 129 So. 658, 171 La. 28 (1930).
[24] *New Orleans Land Co. v. Board of Commissioners*, 182 So. 121, 171 La. 718 (1930).

er to protect the city, and, as a matter of health and comfort, to build a seawall and fill and drain marshy lake lands. The tax levy to pay for the bond issue was held valid, and the levee district's appropriation of the lands involved in the suit was held for a public purpose, notwithstanding the prospective sale of a portion of the land to help pay for the cost of the improvements.[25] The land appropriated was paid for by the board of commissioners according to its assessed value as it appeared on the last parish tax rolls.

Two rather interesting points are involved in this improvement project. In the first place, although attention has already been called to several levee districts carrying out leveeing and draining activities, a levee district is undertaking here a work of improvement which has little or nothing to do with its original character, the protection of life and property by means of levee and drainage systems. The district involved seems to have stepped outside of its quasi-municipal sphere of activity and seems to have assumed the characteristics of a full municipal corporation insofar as the improvement project is concerned. In the second place, the questions of excess condemnation and participation in the real estate business are present, although not necessarily considered. It is doubtful whether the state or federal courts would have held to the decisions cited above unless there had been state constitutional action of some sort, and the action taken in 1922 and in 1928 appears to have influenced the courts to no small degree. Perhaps this is a further indication of the gradual municipalization of special local governing areas.

School Districts

Since it very often happens that the revenues received from the state school fund, from the parish school tax, from the former poll tax, or from other parish sources, are insufficient for special school purposes within certain areas of a parish, provision is made for the creation of school districts and sub-districts, or for the consolidation of existing districts or sub-districts, or both, so that special additional local improvements may be made. School districts, and their divisions, are therefore created for the purpose of levying special taxes, and incurring debt and issuing bonds, for the various

[25] *Dalche v. Board of Commissioners*, 49 F. (2d) 874 (1931).

school purposes enumerated in the constitution, and, since current legislation places no limit as to purpose upon the creation of a school district, the district when established must be recognized as intended for all school purposes enumerated in the constitution.[26]

The constitutions of Louisiana have not defined the territorial limits of a school district but left to the legislature the duty to provide for the establishment of such districts through action by their governing bodies, the parish school boards.[27] The legislature has, therefore, authorized parish school boards to create at will school districts, school sub-districts, and consolidated school districts, and define their boundaries; and such districts may be composed of parts of a parish, of whole parishes, or of parts of two or more parishes.[28] A parish school board must create school districts by direct action, since their creation cannot be implied from any other action, and the courts will not admit their existence unless they are specifically designated as such by the creating authority. Hence since the term district is broad enough to include a ward in the sense that the limits of a district may be as extensive as those of a ward, a police jury or justice of the peace or municipal ward is not a school district unless its territory has been made a school district.[29]

Considerable speculation was raised from time to time as to the nature of the ordinance or resolution creating a school district, but in 1928 the state supreme court finally settled the question by stating that the resolution of a school board creating a school district need not have a title indicating its object, since the constitutional requirement that every law shall have but one object and shall have a title indicative of that object applies only to the legislature and not to police juries, town councils, or school boards.[30] On the whole, the courts have been rather lenient in enforcing the strict procedural requirements as to the creation of special municipal

[26] See Chapters on Education, and Taxation and Finance; and *Gauthier v. School Board*, 115 So. 479, 165 La. 256 (1928).

[27] *Idem.*

[28] For general constitutional and statutory provisions relating to all school districts see *Const. 1921*, art. 10 sec. 10 and art. 14, sec. 14, as amended; *Acts of La.*, 152 of 1920, 83 of 1922 and 149 of 1934. Also see *Sylvestre v. School Board*, 118 So. 818, 164 La. 204 (1927); *State ex. rel. McCune v. School Board*, 95 So. 104, 152 La. 1008 (1922); *Hinton v. School Board*, 99 So. 528, 155 La. 666 (1924); *Milton v. School Board*, 94 So. 886, 152 La. 761 (1922).

[29] *Hemler v. School Board*, 76 So. 585, 142 La. 188 (1917).

[30] *Gauthier v. School Board*, 115 So. 479, 165 La. 256 (1928).

corporations, and have not interfered except where gross abuse of discretion is apparent.[81]

In general, the authority to repeal or extinguish school districts has been implied from the authority to create such areas;[82] and in 1927 the state supreme court went even further by declaring that since a school board has the authority to create school districts, it has, by implication, the power, where circumstances permit, to abolish a district created under this authority, and since the power expressly granted is a continuous one, to create if it sees fit another district of smaller area, which does not include some of the territory of the one abolished, or, if it seems best and circumstances permit, to amend an ordinance creating a district so as to contract or extend its boundaries.[83] Such a broad construction must have its limits, however; hence no parish school board may repeal ordinances creating school districts where those areas have not completed retiring debts incurred, unless adequate provision has been made for the retirement of the debt be some other area or authority.[84]

Parish school boards are the governing authorities of all school districts, serving without extra compensation, and the treasurer of the school board, who is parish superintendent of schools, is treasurer of these areas.[85] School boards are bodies corporate with authority to sue and be sued, they may order and conduct special elections to incur debt and issue bonds or to levy special taxes, and in general they exercise all the powers vested in the districts under their direction.[86]

In 1928 the state legislature provided for the creation of junior college districts, each district to be composed of an entire parish, and for the creation and establishment of junior colleges within these areas.[87] This legislation was enacted to carry out the provisions of the *Constitution of 1921,* Art. 12, Sec. 2, to coordinate the elementary and secondary schools

[81] *Burnham v. Police Jury,* 82 So. 87, 107 La. 513 (1902) and *Sylvestre v. School Board,* 113 So. 818, 164 La. 204 (1927). Also see *Hardin v. Police Jury,* 99 So. 690, 155 La. 899 (1924).

[82] *Moore v. School Board,* 60 So. 284, 131 La. 757 (1912).

[83] *Sylvestre v. School Board,* 113 So. 818, 164 La. 204 (1927).

[84] *Hinton v. School Board,* 99 So. 528, 155 La. 666 (1924).

[85] *Acts of La.,* 152 of 1920, 88 and 100 of 1922. Also see above citation and *L. & A. Ry. Co. v. School Board,* 103 So. 818, 157 La. 1046 (1925); *School Board v. Bank of Napoleonville.* 123 So. 802, 168 La. 1118 (1929).

[86] *Idem,* and *Bradford v. School Board,* 97 So. 430, 154 La. 242 (1923); *Frazier v. Board of Directors,* 97 So. 199, 153 La. 1083 (1923); *Gauthier v. School Board,* 115 So. 479, 165 La. 256 (1928); *Sylvestre v. School Board,* 113 So. 818, 164 La. 204 (1927). Also see Chapters on Education, and Taxation and Finance.

[87] *Acts of La.,* 173 of 1928. Also see *McHenry v. School Board,* 125 So. 841, 169 La. 646 (1930) and *Watkins v. School Board,* 136 So. 591, 178 La. 259 (1931).

and the higher educational institutions of the state, and for the purpose of supplementing the prescribed course of high-school studies. Junior colleges are held to have no existence except in connection with the state high schools that are involved, for, according to the court, they are not higher institutions of learning but are mere super-high schools maintained for local purposes. Like school districts, junior college districts are created by parish school boards, but unlike school districts they must each be composed of a whole parish. The governing authorities of junior college districts are their creators, and they exercise the usual statutory powers and duties, and such additional authority as is necessary and proper in the performance of their functions.[38]

Road Districts

In the State of Louisiana the parish is primarily used as the unit for road purposes; but, should this division of the state fail to bring the necessary local cooperation and supervision, provision has been made for dividing parishes into road districts, sub-districts, and for the consolidation of road districts, sub-districts, or of both, all of which are governmental subdivisions of the state.[39]

The creation of road districts is vested in the police juries of the several parishes and is a well assigned legislative authority; for it may be assumed that the necessary action can be performed much more satisfactorily by a body better acquainted with local conditions and needs than by the state legislature.[40] The type of land included in a road district need not always be of an improved character, but if it should benefit directly or indirectly from the construction of roads within the district, then the discretion of the police jury in creating the area is not subject to judicial review.[41] There is one limitation upon the creation of road districts, however, that prohibits the creation of the whole territory of a parish as a single road district.[42] Even with this limit the courts ordinarily follow the rule that the conduct of a police jury

[38] *Idem.*

[39] For general provisions concerning road districts see *Const. 1921*, art. 10, sec. 10, as amended, and art. 14, sec. 14, as amended; *Acts of La.*, 118 of E. S. 1921 as amended by 99 of 1922. Also see *Wight v. Police Jury*, 264 F. 705 (1919) and *Hardin v. Police Jury*, 99 So. 690, 155 La. 899 (1924).

[40] *Ibid.*, and *K. C., S. & G. Ry. Co. v. Skinner*, 81 So. 748, 145 La. 25 (1919).

[41] *Hulin v. Road Dist.*, 115 So. 650, 165 La. 448 (1928).

[42] *Flanigan v. Police Jury*, 82 So. 722, 145 La. 618 (1919) and *State ex rel. McCune v. School Board*, 95 So. 104, 152 La. 1008 (1922).

in forming a road district to include most of the territory in the parish, where the jury apparently acted in good faith, does not invalidate the creation of the district; the court not being permitted to substitute its judgment as to boundaries for that of the police jury.[43]

In creating road districts the police jury of the parish concerned may give notice on its own initiative of its intention to do so. It must give such notice when petitioned by one-fourth of the property owning taxpayers of the proposed district. In either case the notice must be published for four consecutive weeks in the official parish journal, or if there be none, in a newspaper in an adjoining parish, and the notice itself must begin not later than thirty days before the date set for the public hearing on the creation of the district. On the date set and at the place named the police jury meets, and after hearing objections, if any, passes upon the creation of the proposed district, and its decision is final. At the same meeting, if the district is created, the police jury as the governing authority must submit to the qualified taxpayers the question of special taxation or of incurring debt and issuing bonds, along with the proposed boundaries to be ratified at the special election held for that purpose. Hence, in reality, the ordinance of a police jury creating a road district does not in itself actually establish the district as such, but if the bond issue or tax is voted the district is ipso facto established. For this reason the law authorizing the creation of road districts need not necessarily provide a taxpayer with the opportunity of being heard before their creation.[44]

The consolidation of road districts and sub-districts is permitted, and new territory may be included in the consolidation, but the ordinance or resolution providing for the consolidation must specify the districts to be consolidated, the total bonded debt, the advisability of incurring additional debt, and additional taxes, if any.[45] The same procedure must be followed as is outlined above, and if a majority of the qualified taxpayers in number and amount of property owned assent, the consolidated district is established and immediately assumes all obligations of the districts consolidated. The police jury may repeal and abolish road districts and sub-

[43] *St. Louis & S. W. Ry. Co. v. Nattin*, 27 F. (2d) 766 (1927).
[44] *Cleaver, Vass & Co. v. Road Dist.*, 117 So. 783, 166 La. 711 (1928) and *St. Louis & S. W. Ry. Co. v. Nattin*, 277 U. S. 157 (1928).
[45] *Idem.*

districts in the same manner and by the same procedure as they are created, providing, no obligation has been assumed during their periods of existence. In fact, if a road district is created but its qualified taxpayers refuse to vote a special tax or bond issue, legally the district has no existence, although it may actually exist as an administrative area.[46]

The police jury is the governing authority of road districts, and serves without extra compensation.[47] The treasurer of the district is the parish treasurer. As their agents in all matters pertaining to road construction in any single district, the police jury may appoint a board of supervisors of three members, to be suggested by fifty per cent or more of the property owners of the district. If such a request is not made the police jury appoints at its own discretion. The board of supervisors provides specifications for the construction of the roads in their district after the road bonds or taxes are voted. The board selects its own officers and all serve without pay. During the process of road construction it approves, with the concurrence of the police jury, all estimates of work before they are paid.[48] Road districts are political corporations, subdivisions of the state, may sue and be sued, and may levy taxes, incur debt and issue bonds. The police jury, as the governing body of such areas, has plenary powers in administering public roads within its jurisdiction, and may expropriate land for necessary roads.[49] Police juries, in levying special ad valorem taxes for maintenance or to retire bonds, may levy them on the property of interstate common carriers, a tax of that nature not amounting to regulation of interstate commerce.[50] Although the normal drainage of all roads within its parish is one of the duties of a police jury, a road district or sub-district is not a drainage district for broad purposes unless specifically designated as such, and no road district may undertake a general drainage project as necessary and incidental to the proper care and construction of roads,[51] thus indicating the rather narrow powers of special municipal corporations and their strict judicial interpretation.

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[46] *Idem.*
[47] *W. T. Joyce Co. v. Police Jury*, 88 So. 587, 146 La. 822 (1920); *Fellows v. Police Jury*, 107 So. 514 (1926); *Donaldson v. Police Jury*, 109 So. 84, 161 La. 471 (1926).
[48] *Idem.*
[49] *Police Jury v. Thibodeaux*, 104 So. 872, 158 La. 573 (1925); *La. Irrigation & Mill Co. v. Drainage Dist.*, 104 So. 628, 158 La. 701 (1925).
[50] *St. Louis & S. W. Ry. Co. v. Nattin*, 277 U. S. 157 (1928).
[51] *Ogden v. Police Jury*, 118 So. 65, 166 La. 869 (1928).

Drainage Districts

The drainage of low alluvial lands, by natural or artificial means, has always been a problem in Louisiana, usually of local concern. Drainage, as applied to land in general, contemplates the removal of water from the land surface by means of an artificial channel or trough.[52] But drainage in Louisiana is of two kinds, gravity or natural and reclamation or artificial. Gravity drainage, as provided for by the constitution and statutes, is a system of land drainage which is susceptible to drainage by gravity, or the natural flow of water, and has reference only to such land as may be entirely drained by this system.[53] Ordinarily the higher lands of the state are drained by this method. The low, flat, or swamp lands, not susceptible of gravity drainage, necessarily may be reclaimed or drained only by leveeing and pumping out the water.[54] It follows, then, that a drainage district may not contain both swamp lands (which must be artifically drained) and higher lands (which can be drained by gravity), where the greater portion of the land in the district would receive no special benefit but only indirect benefit accruing generally by reason of the reclamation of the swamp land contained in the district (parentheses are mine).[55] In other words, artificial drainage districts may contain gravity drainage subdistricts where necessary, and gravity drainage districts may contain artificial drainage sub-districts, but the two purposes may not be combined in one general district.[56]

The state legislature has delegated its authority to police juries to create drainage districts and to define their boundaries. Thus the matter of creation and delimitation of drainage districts is entirely within the discretion of police juries, for when the jury of a particular parish adopts an ordinance creating and bounding a drainage district within the parish, it acts within its powers, and the motive of its action will not be inquired into by the courts, save upon allegations of fraud or where the invasion of private rights is apparent.[57] The

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[52] *Marceaux v. Drainage Dist.*, 67 So. 956, 136 La. 918 (1915).
[53] *Idem.*
[54] *Hubert v. Vial*, 84 So. 901, 147 La. 855 (1920).
[55] *Bank of Orleans v. Drainage Dist.*, 82 So. 782, 145 La. 641 (1919) and *Thompson v. Police Jury*, 122 So. 718, 168 La. 517 (1929).
[56] *Hubert v. Vial*, 84 So. 901, 147 La. 855 (1920).
[57] *Bernard v. Drainage Dist.*, 58 So. 498, 130 La. 687 (1912) and *Mount v. Drainage Dist.*, 123 So. 648, 168 La. 969 (1929).

state supreme court has frequently held that the creation of a drainage district is a legislative and not a judicial function, and it will not readily substitute its judgment for the judgments of duly authorized local creating bodies, upon complaints that particular property is not benefited, immediately or directly, save in cases where fraud or oppression is alleged and proved.[58] However, the court declared that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation.

Boards of commissioners are authorized to divide artificial or gravity drainage districts into sub-districts of their class at their own discretion.[59] Like road districts and school districts, which may be composed of adjacent parts of two or more parishes, drainage districts may be so created,[60] but, again, only by joint action of the police juries affected. Drainage districts may not, however, comprise all of one parish, nor may they be composed of the lands of less than five landowners.[61] The general rule that the power to create a special taxing district implies the authority to repeal or abolish such a district, under and within the limits previously shown, also holds true with respect to drainage districts. But it also appears, that with regard to drainage districts, and no doubt with respect to all special corporations, the annulment or repeal of a district must affect the whole area, since a district may not be annulled in part and maintained in part under the original creating ordinance.[62] Any drainage district may also be annulled by a majority vote of the qualified taxpayers of the district, providing no debt has been incurred.

Police juries may create gravity drainage districts and sub-districts on their own initiative, but they must do so when petitioned by a majority of the resident landowners or by a majority in number of acres where the proposed district con-

[58] *Shaw v. Drainage Dist.*, 70 So. 910, 138 La. 917 (1916).
[59] *Drainage Dist. v. Whitney Bank*, 75 So. 748, 141 La. 848 (1917).
[60] *Shautin v. Board of Commissioners*, 107 So. 897, 160 La. 1036 (1926).
[61] *Lacy v. Ottawa Banking Co.*, 272 F. 448 (1921).
[62] *Thompson v. Police Jury*, 122 So. 718, 168 La. 517 (1929).

tains forty or more landowners, and even in the latter case the petition must be by at least twenty per cent of the landowners within the district.[63] With the assent of the drainage commissioners the police jury may at any time before the district has incurred a debt, issued bonds, or levied taxes, change the boundries of the district, so long as the district does not include the area of the entire parish, or repeal entirely the ordinance creating it. When gravity drainage districts or subdistricts are created or recognized, or when lands have been added to or have been taken out of such districts, public notice must be given in the parish journal. Gravity drainage sub-districts may contain the lands of only one owner and must be wholly within the limits and less than the gravity drainage district.

The governing body of a gravity drainage district or subdistrict is a board of five commissioners appointed for four years.[64] The police jury of the parish concerned appoints three and the governor appoints two. Appointments are made upon the recommendation of a majority in the number of acres owned or of resident landowners where the district contains forty or fewer than forty property holders. Where the number is more than forty the petition must be by twenty-five per cent of the total number of landowners. In the absence of a petition or recommendation the police jury and the governor exercise their own discretion. When a drainage district is composed of parts of two or more parishes, the commissioners are selected from the parishes composing the district according to the amount of land of each parish within the district. The board selects its own officers and the bank of deposit. The parish treasurer is treasurer of the district.

All gravity drainage districts exercise corporate powers, have perpetual existence until their objectives and obligations are fulfilled, and the right of expropriation.[65] Drainage commissioners are authorized to open all natural drains, cut and open new drains and ditches where necessary, contract for

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[63] *Const. 1921*, art. 14, sec. 14, as amended 1924; and *Acts of La.*, 238 of 1924, as amended by 297 of 1926, 334 of 1926, and 125, 168, and 227 of 1928. Also see *Ibid.*, 178 of 1932 and 50 of 1934.

[64] *Bernard v. Drainage Dist.*, 58 So. 498, 130 La. 687 (1912); *Lacy v. Ottawa Banking Co.*, 272 F. 448 (1921); *Sturdevant v. Winn*, 98 So. 789, 155 La. 12 (1924).

[65] *DePew v. Drainage Dist.*, 105 So. 78, 158 La. 1099 (1925) and *Police Jury v. Thibodeaux*, 104 So. 872, 158 La. 578 (1925).

work to be done, and purchase materials and supplies.[66] In exercising its powers, unless a drainage board's discretion is unreasonably, arbitrarily, or fraudulently used, the courts will not undertake to control it or to substitute their discretion or that of engineers for that of the public body charged by law with doing the work.[67]

Commissioners may levy a tax or forced contribution not to exceed fifty cents per acre per year, or an ad valorem tax of sufficient millage to ensure the amount necessary to carry out the proposed plan. The kind of tax and the rate must be voted at a special election held for that purpose. Bonds may be issued, secured by the tax or forced contribution, but the principal and interest may not exceed the aggregate amount to be raised to carry out the drainage plan. Notice of thirty days must be given of each special election held, and the commissioners themselves order, conduct, and promulgate all such elections. Bonds may be issued and debt incurred for construction work by the authority of the property owners of the district, but of the contributions or taxes levied to secure such bonds, two and one-half cents per acre per year must be set aside for maintenance purposes only. In addition to this requirement, fifteen per cent of the total estimated revenues, whether for construction or maintenance, must be set aside as a contingent fund and may not be included in any bond issue. Two taxes only may be levied for maintenance purposes; an ad valorem tax not to exceed five mills, or an acreage tax not to exceed fifty cents per acre per year, or both, may be levied. But if an acreage tax of fifty cents per acre is already in force for construction purposes, an ad valorem tax only may be levied for maintenance. The second form of maintenance may be an acreage tax of not more than five cents per acre per year for not more than ten years, which may not be funded into bonds. Maintenance and construction taxes must be voted by a majority in number and amount of property of the qualified taxpayers of the district. All drainage districts

[66] *Const. 1921*, art. 10, sec. 10, as amended; and art. 14, sec. 14, as amended. Also see *Bernard v. Drainage Dist*, 58 So. 498, 130 La. 687 (1912); *Sturdevant v. Winn*, 95 So. 739, 155 La. 12 (1924); *Chiro v. Drainage Dist.*, 105 So. 556, 159 La. 471 (1925); *Drainage Dist. v. Cousin*, 57 So. 992, 130 La. 331 (1912); *Drainage Dist. v. Railroad*, 50 So. 512, 124 La. 502 (1909); *Ludeau v. Drainage Dist.*, 113 So. 842, 164 La. 268 (1927); *Duffy v. Peneguy*, 87 So. 25, 148 La. 407 (1921); *J. M. Burguieres v. Peterman*, 88 So. 756, 146 La. 489 (1920); *Middleton v. Drainage Dist.*, 125 So. 866, 169 La. 719 (1930); *Drainage Dist. v. Caldwell & Co.*, 129 So. 668, 171 La. 58 (1930); *Board of Commissioners v. McClellan*, 114 So. 694, 164 La. 808 (1927); *State v. Drainage Dist.*, 87 So. 810, 148 La. 608 (1921).

[67] *Chiro v. Drainage Dist.*, 105 So. 556, 159 La. 471 (1925).

may ask the advice of the board of state engineers, although the parish engineer is usually the one consulted.

Police juries are required to create artificial drainage districts when petitioned to do so by a majority of the landowners of the proposed district.[68] In order to organize the district, an acreage tax of twenty-five cents per acre is first levied. A civil engineer, appointed by the board of commissioners, makes out a complete plan of the drainage project and maps are drawn when necessary. The plan is then submitted to the qualified taxpaying voters of the district for their approval and the latter then petition the commissioners to continue the work. Within twenty days after receiving this petition the board must appoint three appraisers, qualified voters, but not citizens of the district or relatives of citizens residing within the district. They are required to value all property in the right of way of the plan, and assess the amount of damages that will be sustained. After completing their work they submit a report to the board. The commissioners then petition the local district court for the right to expropriate the necessary land, and must publish their action in the parish journal. The court hears all disputes and decides all issues. Dissatisfied property owners may appeal. After receiving a favorable decision from the court, the board has full power to act. Two or more sub-districts may be formed within the artificial drainage district created as outlined above.

Artificial drainage districts and sub-districts are governed by a board of five commissioners appointed by the police jury for overlapping terms of five years, one member being appointed each year. Appointments are made at the request of a majority of the property owners of the district, or if there is no such recommendation the police jury uses its discretion in appointing to office. The commissioners serve without compensation and select their own officers. Artificial drainage districts are political corporations, may expropriate land, levy taxes, and issue bonds.[69] The board selects the depository of the district.

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[68] Concerning artificial drainage districts see *Const. 1921*, art. 15, sec. 1; *Acts of La.*, 85 of E. S. 1921; 64 of 1922; 285 of 1924; 272 of 1926; 200 and 288 of 1928. Also see *State v. Conway*, 118 So. 89, 166 La. 840 (1928); *State v. Buchler*, 117 So. 814, 166 La. 748 (1928); *Hubert v. Vial*, 84 So. 901, 147 La. 855 (1920); *Thompson v. Police Jury*, 122 So. 713, 168 La. 517 (1929).

[69] *Idem.* Also see *Police Jury v. Thibodeaux*, 104 So. 872, 158 La. 578 (1925).

For construction purposes the commissioners may levy a tax according to benefits assessed, the millage to be sufficient to supply the revenues necessary for the completion of the plan. For maintenance purposes they may levy a tax on benefits assessed not to exceed five mills per year. Commissioners may not take actual possession of any appropriated land until the price awarded has been paid. Debt may be incurred and bonds issued, but the total amount in bonds may not exceed ninety per cent of the total aggregate of the taxes levied, ensuring a safe operating margin. All artificial drainage districts may fund and refund bonds as they become due and payable. Artificial drainage districts or sub-districts may be consolidated by joint petition of a majority of the land-owners of each district affected. Plans may be changed by petition and the boundaries of districts contracted or extended.

Irrigation Districts

In southern portions of the state where agricultural products requiring irrigation are raised, such as rice, irrigation projects are necessary. Portions of a parish, or of two or more parishes, must be formed into irrigation districts by their police juries on petition by twenty per cent of the tax-paying property owners of the proposed area.[70] Police juries may create irrigation districts on their own initiative, but a public hearing must be held prior to such action. Boundaries may be changed and debt incurred through special elections.

The governing authorities of irrigation districts are boards of five commissioners appointed by their police juries for terms of four years. The board selects its own officers and other employees. Officers may receive not more than one hundred dollars per month. Other board members receive only their expenses. A majority of the land owners of the district may request that certain individuals be appointed commissioners. Otherwise, the police jury uses its own discretion.[71]

Irrigation districts are political corporations of the state, they may lease, acquire, or construct irrigation systems, may

[70] For all general provisions in respect to irrigation districts see *Const. 1921*, art. 10, sec. 10 as amended, and art. 14, sec. 14, as amended; *Acts of La.*, 275 of 1926; *Middleton v. Police Jury*, 125 So. 447, 169 La. 458 (1929). See also *Ibid.*, 89 of 1902 and 48 of 1926.

[71] *Idem.*

acquire water for distribution, and they may distribute water and charge for such service. Expropriation of property is authorized where necessary. Debts may be incurred and bonds issued when authorized at a special election held for that purpose. Taxes may be imposed under the same conditions not to exceed in the aggregate fifty cents per acre per year, and the total bonded debt may not exceed the total forced contribution to be raised. The above taxes and bond issues may be used for construction purposes only; maintenance of the district is dependent upon the charges for water levied after the project is complete. The board may let contracts for work to be done, or it may itself take active charge of and supervision over the work. When landowners, owning twenty-five per cent of the property assessed within the district, petition the commissioners to call an election to authorize a bond issue for constructing, leasing, or acquiring a canal system, the plan for the project must first be submitted to the board of state engineers for its approval. The voting of bonds to support the project may only take place after a favorable report has been returned by the engineers.[72]

Waterworks Districts

Provision is made for the creation of waterworks districts for the benefit of urban communities not included in incorporated municipalities. This makes possible a pure and continuous water supply for those sections taking advantage of this opportunity. Police juries may create waterworks districts on their own initiative, but such action is required when petitioned for by twenty-five or more property owning taxpayers of a proposed district.[73] Parishes may be divided into one or more districts, but no district may contain fewer than two hundred and fifty resident landowners. Waterworks sub-districts may also be created for specialized purposes within a waterworks district.

A governing board of five commissioners is appointed on the recommendation of a majority of the property owning taxpayers of the area. Three are appointed by the police jury

[72] *Idem.*

[73] For all general provisions with respect to waterworks districts see *Const. 1921*, art. 10, sec. 10 as amended, and art. 14, sec. 14 as amended; *Acts of La.*, 343 of 1926; *Middleton v. Police Jury*, 125 So. 447, 169 La. 458 (1929); *Waterworks Dist. No. 1 v. Caldwell & Co.*, 127 So. 789, 170 La. 326 (1930). Also see *American City*, Aug. 1932 for a description of East Jefferson Waterworks Dist. No. 1 which is now a parish project.

and two by the governor. Their terms are for five years, one member being appointed each year. The commissioners select their own officers and employees, and all members of the board, except the secretary and the treasurer, receive three dollars per day for not more than twenty-five days per year for their services. The treasurer may receive eighteen hundred dollars per year and the secretary five hundred dollars per year. Boards of commissioners may fix rates and in general direct and supervise the policies of their districts. Bonds may be issued for constructing or purchasing waterworks and water main systems, to be secured by a tax levied by the board of sufficient millage to ensure the payment of principal and interest when due. Ad valorem taxes not to exceed in the aggregate five mills per year may be levied for the improvement and maintenance of waterworks systems. Taxes and bonds are both subject to the usual constitutional limitations, and no tax may be levied nor bonds issued unless authorized by the qualified landowning taxpayers at an election held for that purpose.[74]

Sewerage Districts

Whenever a numerous population, outside of an incorporated municipality, is in need of a sewerage system, a special district including the area may be created for that purpose.[75] Police juries may give notice on their own initiative that they intend to create such a district, but when petitioned by one-fourth of the property owners of a proposed area they are required to give such notice. The creation of the district must take place at an open session of the police jury. Following a public hearing, police juries may abolish or change the boundaries of sewerage districts and may include new territory, but no debt incurred by the districts changed may be affected by the abolition or change. A sewerage district may not, however, be composed of the entire area of a parish.

The governing body of the district is the police jury, although a supervising board of three members appointed by the jury at the request of fifty per cent of the property taxpayers of the district acts as its agent. The police jury and the supervising board both serve without compensation. The

[74] *Idem.*

[75] For general provisions concerning sewerage districts see *Const. 1921*, art. 10, sec. 10 as amended, and art 14, sec. 14 as amended; *Acts of La.*, 222 of 1924; *Cooley v. Sewerage Dist.*, 180 So. 37, 172 La. 1019 (1931).

district is a political corporation of the state, may levy taxes and issue bonds, when authorized by the qualified taxpayers of the district. Bonds may be issued for the construction of sewerage works, and a maintenance tax of not more than five mills per year may be levied for its operation.[76]

Limitations on Special Taxing Districts

With nine special types of taxing areas and with provision for splitting five of these types into sub-districts, all of these existing in addition to the parish and its activities and the full municipal corporation and its activities, it seems necessary here to note the constitutional and statutory limitations operating upon them, and such additional personal and property rights as may also affect them. In this connection it is not deemed necessary to consider each type of special district as it is affected by these limits; for the general characteristics of the districts described are now so apparent that it is possible to generalize to some extent and lay down certain general conclusions.

Limits on Discretionary Powers

Notwithstanding the fact that the courts of Louisiana have consistently declared that they will not substitute their judicial opinion for that of the legislature on questions of fact or expediency, or for that of the governing bodies of political subdivisions involving administrative discretion, the latter bodies are, nevertheless, compelled to remain within the limits of the law, and their powers of discretion are not unlimited.

In general, police juries or other governing authorities of special districts have both legislative and executive functions and are vested with large discretionary powers in their sphere of action, being small bodies close to the inhabitants of their governmental areas, and it is only when they commit abuse or injustice and injury to their principals that the judiciary will extend protection and check such abuse.[77] But, for instance, where a special district is organized and a tax is voted for a specific purpose, the police jury must levy the tax upon all the lands subject to taxation within the district, and it has no discretion as to the property the tax is to be levied

[76] *Idem.*
[77] *Cruse v. Police Jury*, 92 So. 679, 151 La. 1056 (1922).

upon.[78] In connection with the power of taxation, the right of a political corporation or subdivision of the state to levy taxes must be conferred in express terms, and is not to be implied from the mere fact that the legislature created the corporation.[79] Likewise, where a police jury submitted to the taxpayers of a district the question of issuing bonds in order to build roads, and stipulated the roads to be built, it could not use the proceeds of the bonds to build an entirely different road.[80] Neither may a police jury use the proceeds of a bond issue, found to be insufficient to build a stipulated road, to construct a different route found to be cheaper and more practicable.[81] Again, the governing body of a special district may not, after agreement with a state department for each to bear half the cost of a project, the latter to complete its work at some future indefinite date, use the entire sum voted for the whole project on the half agreed to.[82] Lastly, in connection with construction work undertaken by a special taxing district, the governing authorities may not award a contract to one firm on the ground that it is the most responsible bidder, although not the lowest bidder, neither may it require the material to be used to come from a certain source.[83] These few examples illustrate, perhaps, the usual restrictions operating on the discretion of governing bodies of special municipal corporations in Louisiana, and certainly indicate that their administrative discretion is by no means unlimited.

Territorial Limits

With the exception of levee districts, all other special municipal corporations are created by the police jury or parish school board of the parish concerned. There are no constitutional limitations operating on the authority of the legislature in its creation of levee districts. There are, however, three limitations which restrict the freedom of creating authorities in drawing the boundaries of newly created special corporations. In the first place, no road, drainage, or sewerage district may comprise the whole area of a parish, although such districts may be composed of parts of one or more parishes.[84]

[78] *F. B. Williams Co. v. Martin*, 81 So. 807, 144 La. 767 (1919).
[79] *State v. Drainage Dist.*, 87 So. 810, 148 La. 608 (1921).
[80] *Cruse v. Police Jury*, 92 So. 679, 151 La. 1056 (1922).
[81] *Jeane v. Police Jury*, 118 So. 872, 168 La. 1053 (1927).
[82] *O'Beirne v. Police Jury*, 97 So. 461, 154 La. 829 (1923).
[83] *Standard Highway Co. v. Police Jury*, 108 So. 819, 158 La. 294 (1925).
[84] See preceding sections on this subject and *State v. Board*, 95 So. 104, 152 La. 1008 (1922).

By implication, then, it may be assumed that any one of the other types of special municipal corporations may include the entire area of a parish. Certainly, this is the rule in respect to school districts.[85] But, as shown elsewhere, a road district may be created by a police jury so as to include practically all of an entire parish, if the police jury apparently acted in good faith and it was not shown that the boundaries of the district were extended purposely to include any particular property.[86] It is safe, then, perhaps, to extend this ruling to other types of districts prohibited from comprising entire parishes.

In defining the boundaries of a special municipal corporation, must the police jury include in the resolution describing the proposed area a description of each piece of land within its boundaries? In 1925 the state supreme court declared that such a detailed description was unnecessary where the general boundaries of an area clearly included the specified lands in question.[87] In the second place, no property may be included within a special taxing district that does not benefit from such inclusion, for this would involve the "due process" clause of the fourteenth amendment of the national constitution, in addition to violating the safeguards contained in the state constitution.[88] The third restriction is of a more practical nature and involves a topic important enough to warrant separate consideration, that is, that no special municipal corporation, even though created, defined, and established by the proper authority, may levy taxes or issue bonds for special local needs unless such taxes or bonds are voted by a majority in number and amount of property owned of the qualified property owning taxpayers.

Special Tax and Bond Elections

Since the objects in creating the special municipal corporations described above are particular works of a public character but of local importance, funds must be provided to secure the purposes for which they are created. Financing these works may be accomplished in two ways; either by means of a special tax to be used as it is collected or sums of

[85] *Ibid.*, and *Gauthier v. School Board*, 115 So. 479, 165 La. 256 (1928).
[86] *St. Louis & S. W. Ry. Co. v. Nattin*, 27 F. (2d) 766 (1927).
[87] *Henderson Land Co. v. Police Jury*, 106 So. 285, 159 La. 783 (1925).
[88] *Myles Salt Co. v. Drainage Dist.*, 239 U. S. 478 (1916); *Shaw v. Drainage Dist.*, 70 So. 910, 138 La. 917 (1916); *Mount v. Drainage Dist.*, 128 So. 648, 168 La. 969 (1929).

money may be borrowed using the pledged tax as security, or else by means of a bond issue with provision for a special tax to retire the issue year by year. These taxes or bonds must be voted by a majority in number and amount of property owned of the qualified property owning taxpayers of the district. Thus, there are two safeguards from the point of view of the taxpayer.

There are, however, two exceptions to the rule that all special taxes and bonds must be so voted. The first is, that commissioners of levee districts may levy taxes and issue bonds as authorized by the state legislature without, ordinarily, referring the question to the taxpayers of the district.[89] The reason for this is rather clear. Despite the fact that levee districts are, in a sense, local in character, and are also of much the same nature as other special municipal corporations in Louisiana, they are created directly by the state legislature, are more directly agents of the state, and the commissioners of these areas exercise powers under the general supervision of the legislature and of the governor. The other exception is one just recently provided. A constitutional amendment of 1924, with enacting legislation of 1928, authorized gravity drainage and sub-drainage districts to incur an additional debt and levy additional taxes for its ultimate retirement, for the purpose of completing and perfecting any system of gravity drainage, eighty per cent of which had been accomplished at the time, without referring such bonds or taxes to a vote by the taxpayers of the district.[90]

Only those property owning taxpayers duly registered and qualified under the state election laws, may vote in special bond or tax elections. Registration for all voting purposes takes place every four years, but prospective voters may register at other times. No one, however, may register and qualify within less than thirty days preceding a special election.[91] Aside from being registered, all prospective voters must have their names on the parish tax assessment roll last made.[92] The names of persons duly registered and authorized to vote in a special election are furnished to the election commissioners

[89] *Thibaut v. Levee Dist.*, 96 So. 47, 153 La. 501 (1923); *Dehon v. Levee Board*, 34 So. 770, 110 La. 767 (1904).
[90] *Middleton v. Tangipahoa Drainage Dist.*, 125 So. 866, 169 La. 719 (1930).
[91] *Bonds v. School Board*, 114 So. 166, 164 La. 584 (1924).
[92] *Gewin v. Police Jury*, 58 So. 182, 130 La. 416 (1900).

by the parish registrar of voters.[93] However, no one duly registered and whose name appears on the last assessment roll but who has sold his property before the election, may vote in such special elections.[94]

A brief explanation of the procedure of special elections will indicate additional safeguards to taxpayers affected by such elections. The ordinance calling the election must designate the time and the polling places;[95] when and where the returns are to be received, the ballots counted, and the results declared; and the ballots used must be those prescribed by law.[96] The ordinance must also specify the term or designate the years for which the tax is to be levied,[97] or, if a bond issue is being voted, the amount and provision for future payment must be included. The election commissioners must be appointed by the governing authorities holding the election.[98] Where a sufficient number of voters and amount of property did not vote in a special election, and where if they had voted and voted against the proposed tax or bond issue the election would have failed to carry, the election is null and void.[99] Finally, where fraud is shown in an election, which might have affected its result, the election will be held void;[100] but where irregularities or informalities only are shown, which could not have affected the election one way or the other, the election will be held valid.[101]

Writs of Mandamus and Injunction

In general, writs of mandamus will be issued against the governing bodies of political subdivisions only to compel a clearly authorized and mandatory act made so by constitutional or statutory enactment; and injunctions will be granted only where such bodies act in an arbitrary, illegal way, or exceed their powers. Few writs of mandamus are requested or granted against the governing authorities of special municipal corporations, since their powers and duties are so well defined by law and are so complete in their scope as to render

[93] *Bradford v. School Board*, 97 So. 430, 154 La. 242 (1923).
[94] *Idem.*
[95] *Sylvestre v. School Board*, 113 So. 818, 164 La. 204 (1927).
[96] *Davis v. School Board*, 58 So. 572, 130 La. 786 (1900).
[97] *Folse v. Police Jury*, 55 So. 681, 128 La. 1080 (1898).
[98] *Ludeau v. Drainage Dist.*, 113 So. 842, 164 La. 263 (1927).
[99] *Whatley v. School Board*, 99 So. 603, 155 La. 797 (1924); *White v. School Board* 111 So. 700, 163 La. 266 (1927).
[100] *Dupuis v. Sub-drainage Dist.*, 79 So. 210, 143 La. 656 (1918).
[101] *Ludeau v. Drainage Dist.*, 113 So. 842, 164 La. 263 (1927).

negligible the number of cases where actions of this character have been sought. Petitions for restraining or prohibitory writs are, however, rather common, inasmuch as the powers and duties of the governing bodies in question are more extensive than they are vague.

Ordinarily, a taxpayer has a right of action through an injunction to prevent a political corporation or board from entering into a contract that will impose a financial burden on the property of the taxpayer in violation of the law.[102] Thus a court of proper jurisdiction will issue an injunction to prevent the collection of taxes upon property illegally included in a drainage district.[103] Likewise, an injunction will usually be granted to restrain the collection of a tax on the ground that the tax or, if the tax be funded, the bond issue is altogether inadequate to complete the proposed project of a special taxing district.[104] On the other hand, the owners of property within a particular taxing area cannot enjoin the collection of taxes, where bonds have already been sold, on the ground that the scheme adopted by the governing body in carrying out the proposed public work has resulted in failure.[105] In connection with writs of mandamus, one of the most prevalent causes of actions of this character, is the request for compulsion to perform a clearly unauthorized act.[106]

Prescription

It is now apparent, perhaps, that taxpayers and property owners are protected to a large degree against the invasion of their personal and property rights, not only from other individuals or groups, but also to a certain extent from their own unwitting actions. The legislature has full power to act in protecting such rights, the discretionary powers of governing authorities of special municipal corporations are limited, writs of mandamus and injunction may be issued to protect these rights, there are reasonable limits as to the territorial extent of special taxing districts, and all special bonds or taxes must be voted by a majority in number and amount of property owned of the qualified taxpaying property owners.

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[102] *Welsh v. Levee Dist.*, 128 So. 705, 168 La. 1037 (1929).
[103] *Shaw v. Drainage Dist.*, 70 So. 910, 138 La. 917 (1916).
[104] *Bomer-Blanks Lumber Co. v. Bouanchaud*, 100 So. 731, 156 La. 598 (1924).
[105] *Snowden v. Levee and Drainage Dist.*, 134 So. 389, 172 La. 447 (1931).
[106] *State v. Drainage Dist.*, 87 So. 810, 148 La. 603 (1921).

A certain responsibility has, however, been placed upon those desirous of protecting rights deemed to be infringed upon or interfered with, in that charges of irregularities or illegalities occurring in the creation of special taxing areas, or charges that the tax or bond voted are illegal or unconstitutional, must all be pressed before a court of proper jurisdiction within not more than sixty days after the creation of the district or the election authorizing the special tax or bonds.[107] It has been contended in many suits that this sixty day period is too short to allow a proper examination of the facts and law by parties desiring to protect rights alleged to be denied or infringed upon, but the supreme court of Louisiana in 1917 answered these objections as follows: "The power of the state to limit the time within which legal rights, whether derived from constitutions or elsewhere, may be asserted in her courts is as well recognized as are the rights themselves, and a law which recognizes a right and requires that it be exercised within a reasonable time, and not throughout eternity, is obnoxious to no constitutional provision."[108] Thus, as may be seen from the number of types of cases cited, the federal and state courts will entertain no objections by dissatisfied taxpayers directed against the creation of a special municipal corporation, or against a special tax or bond issue, where, in the opinion of the court, the safeguards established by law were adequate if petitioned for within the rather short period of sixty days.

Despite this rather rigid application of the rule of prescription after sixty days have elapsed from the date of cause for action, there seem to be two general classes of cases in which the courts will grant relief even though the period of grace has expired. The first class includes cases where the creation of special districts, or other proceedings, are not only unauthorized by but are also in contravention of the existing constitutional or statutory law.[109] The second class includes cases wherein the petitioners have invoked the "due process" clause of the Fourteenth Amendment to the Constitution of

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[107] *Const. 1921*, art. 14, sec. 14, par. n and *Acts of La.*, 46 of E. S. 1921.

[108] *Crow v. Road Dist.*, 76 So. 182, 141 La. 1017 (1917); *Roberts v. School Board*, 99 So. 280, 155 La. 331 (1923); *Chiara v. Drainage Dist.*, 105 So. 418, 159 La. 422 (1925); *Henderson Co. v. Police Jury*, 106 So. 285, 159 La. 733 (1925); *Brock v. Police Jury*, 105 So. 227, 159 La. 66 (1925); *Drainage Dist. v. Caldwell & Co.*, 129 So. 668, 171 La. 58 (1930); *St. L. & S. W. Ry. Co. v. Nattin*, 27 F. (2d) 766 (1927).

[109] *Drainage Dist. v. Cousin*, 57 So. 992, 130 La. 331 (1912); *W. T. Joyce Co. v. Police Jury*, 83 So. 587, 146 La. 322 (1919); *Lyon Lumber Co. v. School Board*, 286 F. 1 (1923); *State v. Police Jury*, 105 So. 97, 159 La. 53 (1925).

the United States and have proved their claims; and in general, in such cases, both state and federal courts will grant relief despite the lapse of the sixty day period of grace.[110]

A general survey of cases concerning this subject will probably warrant the following conclusions. In the first place, federal courts are rather slow in taking jurisdiction in cases of this type even though the Fourteenth Amendment to the National Constitution is invoked, probably because they first desire a ruling by a state court, inasmuch as property rights are protected in Louisiana by the civil law and not by the common law.[111] In the second place, the courts, both state and federal, seem to exercise a large degree of discretion as to whether the prescriptive rule is to be applied or whether it is to be overlooked. And finally, the fact that a tax may be levied or bonds issued, and the proceeds of either used in whole or in part, makes necessary the early adjudication of all points of a questionable nature before such expenditures are made.

The Police Power and The Power of Eminent Domain

No consideration of personal and property rights as they exist against the actions of special municipal corporations would be complete without some attention being given to two rather important limitations on such rights, namely, the police power and the power of eminent domain. Under either of these two powers private property may be taken for public purposes; but in the first case compensation need not necessarily be given, whereas in the second case compensation must always be granted.[112] A second difference, certainly in Louisiana, lies in the fact that property may be taken under the police power without warning the owner, or without adopting the usual legal or judicial procedure followed when property is taken under the power of eminent domain.[113]

All political corporations of Louisiana are authorized to take private property for public use, where such authority is necessary for the completion of the work for which they were

[110] *Godchaux Co. v. Estopinal*, 88 So. 690, 146 La. 405 (1920); *Myles Salt Co. v. Drainage Dist.*, 239 U. S. 478 (1916).

[111] Dart, W. K., *The Louisiana Judicial System*, pp. 20 *ff.*

[112] *Searl v. School Dist.*, 133 U. S. 553 (1890); and *Bowditch v. Boston*, 101 U. S. 16 (1880).

[113] *City of N. O. v. Levee Dist.*, 115 So. 181, 164 La. 1020 (1927); *McGeehan v. Levee Commissioners*, 115 So. 478, 165 La. 241 (1928).

created, under the power of eminent domain.[114] In this connection the law ordinarily requires the selection of a group of local landowners to value the property taken, and in cases where large areas of land are seized the values as they appear on the assessment rolls for purposes of taxation are ordinarily used as a basis for computing the compensation. In all cases appeal to the courts is provided.[115] In one instance, however, that of levee districts, property may be taken by a special municipal corporation either under the power of eminent domain, or under the police power; under the latter power primarily because levee districts are direct agents of the state. But recent constitutional changes have so modified this dual authority that special mention might be made of its present character.

It may be well again to call attention to the fact that property rights in Louisiana are not protected under the common law but under the civil code, a by-product of the French and Spanish civil codes with certain additions and changes made necessary because of local or other conditions. As a result, there are certain peculiarities that prevail in Louisiana that are seldom found in any other state. With respect to the exercise of the police power by levee districts the words of the state supreme court in 1893 on this subject cannot, perhaps, be improved upon. In commenting on a suit for damages against a levee district the court declared that under Art. 665 of the civil code riparian property on navigable rivers is subject to a servitude or easement imposed by law for the public utility, authorizing the state, under proper laws, to appropriate the space required for the making of levees and roads; in locating and building levees the state does not expropriate property, but lawfully appropriates it to a use to which it is subject under the title itself; in so doing it acts not under the power of eminent domain but in the exercise of its police power; laws, constitutional or statutory, concerning expropriation of property and requiring compensation therefore, have no application to property legitimately taken for levee purposes; and private injury resulting therefrom is without redress.[116] Six years later the court reiterated this doctrine but with the additional implication that property

[114] *Police Jury v. Thibodeaux*, 104 So. 372, 158 La. 578 (1925).
[115] *Brittingham v. Drainage Dist.*, 119 So. 259, 167 La. 368 (1928).
[116] *Peart v. Meeker*, 12 So. 490, 45 La. Ann. 421 (1893). Also see *Bose v. Levee Commissioners*, 11 La. Ann. 165 (1856) and *Civil Code of La.*, art. 665 (661).

could be taken under the police power of the state without any recourse at all to the procedure ordinarily followed when private property is taken for a public purpose.[117]

By 1921, however, a change in public opinion concerning this rule became apparent, and the new constitution of that year consequently provided for compensation for property used or destroyed for levee purposes.[118] Subsequent judicial decisions in suits for damages followed this new rule, abolishing the older provision of the civil code in favor of full compensation for all property taken under the police power for levee purposes.[119] Even with this change the state courts have not entirely relegated to the scrap-heap the expropriating authority of levee districts under the police power. In two decisions of 1927 and 1928 respectively the state supreme court held, in dicta, that the state "could," under its police powers, deny all recovery for property damaged in the construction of public levees, and that private property could still be taken under the police power for public use in cases of extreme emergency without compensation.[120] It is, no doubt, now safe to conclude that ordinarily all private property taken for levee purposes, either under the police power or under the power of eminent domain, must be paid for by levee districts; but in other activities neither the state nor its properly authorized political subdivisions may be hampered in exercising the police power unless specific limits are set by statute or by the constitution.

Liability of Special Taxing Districts

Only a brief treatment of the liability of the governing authorities of special municipal corporations or of the corporations themselves can be made here, since a more complete study of the liability of political corporations has been made elsewhere.

In general, neither special municipal corporations nor their governing bodies are liable for tortious acts in the ab-

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[117] *Koerber v. Levee Board*, 25 So. 415, 51 La. Ann. 528 (1899).
[118] *Const. 1921*, art. 10, sec. 6.
[119] *Laccur v. Levee Dist.*, 104 So. 686, 158 La. 787 (1925); *Russell v. Levee Dist.*, 105 So. 361, 159 La. 330 (1925); *Green v. Levee Dist.*, 111 So. 619, 163 La. 117 (1927).
[120] *City of N. O. v. Levee Dist.*, 115 So. 181, 164 La. 1020 (1927); *McGeehan v. Levee Commissioners*, 115 So. 473, 165 La. 241 (1928).

sence of a statute defining or extending such liability.[121] The governing authorities are, however, liable for contracts made and executed.[122] Again, when taking property either under the power of eminent domain or, in the case of levee districts, under the police power, damages must be paid, since such provision is made by statue or by the constitution.[123] In addition, when property has been taken and paid for and the resulting construction of a public work is followed by damage to other private property not paid for, compensation for the additional damages must be made.[124] Finally, when the governing authority of a special district is vested by the state legislature with certain mandatory powers, and through clearly established negligence a property owner is injured by reason of the lack of exercising such powers, the governing authority may be held liable as negligent.[125]

From the above explanation it may be seen that special taxing districts or their governing bodies are seldom held liable for damages, tortious or otherwise, in the absence of a constitutional or statutory provision to that effect. Insofar as Louisiana is concerned, a few practical reasons seem to suggest themselves as a basis for such a doctrine. In the first place, the police jury, or other special body, is the governing authority of these quasi-municipal districts within the parish, and, since it is a body exercising public governmental powers expressly delegated by the state legislature, it is not liable in a collective capacity so long as it remains within its public governmental sphere of activity. Cases where the police jury, or similar governing body, has gone outside of this sphere are so few that they do not warrant consideration.

In the second place, if the governing body were held liable in a collective sense for certain acts of a special municipal corporation under its control, the damages would either have to be paid out of the funds of the area itself, thus practically prohibiting property owners within the district from seeking damages since they bear the financial burden of the district,

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[121] *Bankins v. Police Jury*, 40 So. 925, 116 La. 639 (1906); *Barbee v. Road Dist. No. 1*, 130 So. 660 (1930); *Ward v. Levee Dist.*, 92 So. 769, 152 La. 158 (1922), 260 U. S. 745; *McGeehan v. Levee Commissioners*, 115 So. 478, 165 La. 241 (1928).

[122] *Hankins v. Police Jury*, 95 So. 102, 152 La. 1000 (1922); *Donaldson v. Police Jury*, 109 So. 34, 161 La. 471 (1926); *Levee Dist. v. Blythe*, 118 So. 150, 168 La. 929, (1927); *Welsh v. Levee Dist.*, 128 So. 705, 168 La. 1037 (1929); *Ventriss Bros. v. Bouanchaud*, 91 So. 756, 151 La. 837 (1922); *Sternberg v. Drainage Dist.*, 105 So. 872, 159 La. 860 (1925); *Drainage Dist. v. McClellan*, 114 So. 694, 164 La. 808 (1927); *Middleton v. Drainage Dist.*, 125 So. 866, 169 La. 719 (1930).

[123] See above section on this subject.

[124] *Brittingham v. Drainage Dist.*, 119 So. 259, 167 La. 868 (1928).

[125] *Taglialavore v. Drainage Dist.*, 96 So. 665, 153 La. 811 (1923).

or else a special additional tax would have to be levied to pay the damages awarded. In neither case would this be possible since money collected from taxes for certain purposes may be expended only for those purposes, and to date the legislature has not provided that special additional taxes may be levied in order to pay judgments against special municipal corporations.[126] Lastly, if the governing body were alleged to be liable in an individual or personal capacity, there might be reasonable doubt of securing judgments since the powers exercised are by their very nature governmental and hence public.

A few reasons are advanced as bases for the lack of cases of damages against drainage districts or their boards of commissioners. Boards of drainage commissioners are public officials, acting in a governmental capacity, and exercising public powers delegated expressly by the legislature, and hence are not liable for negligence unless the absence of required action is conclusively proven and the power to be exercised is of a mandatory character.[127] Again, the fact that damages may never be collected even though awarded, since no law so provides, may affect the institution of such actions. Finally, all drainage schemes must be approved by the state board of engineers, allowing little or no discretion to the boards of commissioners, and hence removing the chief cause of actions for damages.

Levee districts occupy a special position, as compared with other quasi-municipal areas, since they are direct agents of the state and are not so distinctly local in character as are other special taxing districts of Louisiana. In view of this fact levee districts may take private property for levee purposes either under the power of eminent domain or under the police power of the state. Under the former power, compensation must, of course, be awarded.[128] Under the latter power levee districts have been made liable for certain damages by the constitution and statutes.[129] In either case the compensation awarded is always limited to the value appearing on the tax assessment rolls of the property taken, and no compen-

[126] See *State v. Drainage Dist.*, 87 So. 810, 148 La. 608 (1921).

[127] *Taglialavore v. Drainage Dist.*, 96 So. 665, 158 La. 811 (1923). It is interesting to note here that since 1916 the above case is the only one of its nature to be acted upon by the state supreme court, so far as the writer could ascertain.

[128] See preceding section and *Colonial Land Co. v. Levee Dist.*, 139 So. 685, 170 La. 1057 (1930).

[129] See preceding section and *Foret v. Levee Dist.*, 125 So. 437, 169 La. 427 (1929).

sation may be granted where the value of the property taken does not appear on the assessment rolls. In cases involving torts or wrongs resulting from the commission of certain acts or of negligence in their commission, in general, neither levee districts nor their boards of commissioners are held liable for damages in a collective capacity, for no acts of these officers within the authority conferred upon them can give rise to any legal damage, and if they acted without and beyond such authority, their acts are not binding on the district, which is a mere functionary of the state. Hence, any liability incurred must be of a personal nature.[130] Again, if levee commissioners commit a tort or wrong it is not the result of misuse of discretion, since the officers in question are bound to follow the plans assented to by the state board of engineers. And finally, even though a judgment for tort or damages be allowed, the judgment may not be paid out of funds appropriated by law to another purpose without violating the law, nor may a special tax be levied to pay the judgment without there being expressly delegated authority to do so.[131]

In conclusion, it is possible to state that so long as the governing authorities of special municipal corporations act within their legal powers they may not be held liable for damages except where such liability is allowed by statutory or constitutional provision. If the authorities go beyond their powers they may be held liable personally but not collectively. Finally, should a judgment be returned against a special district or its governing body, the judgment may not be paid unless the law specifically provides for such payments. In this latter case the state legislature is, of course, at fault if there is no legislation covering such situations.[132]

Multiplication of Special Taxing Districts and the Overlapping of Districts

As may be seen from the foregoing description of special municipal corporations of Louisiana, any particular area of a parish, outside of an incorporated municipality, may be a part of a levee district, a part of the parish, a part of the par-

[130] *Peart v. Meeker*, 12 So. 490, 45 La. Ann. 421 (1893); *McGeehan v. Levee Commissioners*, 115 So. 473, 165 La. 241 (1928).

[131] *Idem.*

[132] See *Const. 1921*, art. 14, sec. 14, par. j, as amended 1926; *Shaw v. Board of Commissioners*, 70 So. 910, 138 La. 917 (1916); *State v. Drainage Dist.*, 87 So. 310, 148 La. 603 (1921).

ish as a navigation district, a part of the parish as a junior college district, a part of the parish as a school district, a part of a school and sub-school district, of a road and sub-road district, of a consolidated school and sub-school district, of a consolidated road and sub-road district, of a gravity or artificial drainage district and of a sub-district of either class, of an irrigation district, of a waterworks and sub-waterworks district, of a lighting district, and of a sewerage district, or nineteen in all, each of the above mentioned districts being separate and distinct legal entities although all of them may include more or less the same area. Six of these special districts are governed by the police jury of the parish, six of them are governed by the parish school board, and each of the remaining nine has its own distinct governing body, separate from the police jury and from the parish school board. Certainly, special taxing districts in Louisiana are increasing in number as to type.

A far more important issue is present here, though, one that has been raised fairly recently. May a particular area be a part of more than one district of the same type? Certain types of the above mentioned quasi-municipal corporations are, by their very nature, excluded from this discussion. Drainage districts, either gravity or artificial, must include a rather comprehensive project for a given area, thus making unnecessary, if not impossible, another district for the same purpose within the same area. Levee districts, irrigation districts, waterworks districts, lighting districts, and sewerage districts may also be included in this category for the same reason. This leaves school and road districts, their sub-districts and consolidated school or road districts for the subject of a more detailed consideration.

Prior to the adoption of the *Constitution of 1921* Louisiana followed the rule in force in most states, namely, that two or more political corporations created for the same purpose and exercising the same powers could not legally exist in the same territory. As one eminent authority explains this rule: "It is a well recognized principle of law that there cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdictions, and privileges."[188] Other authorities take the

[188] Dillon, *op. cit.*, 5th ed., sec. 854.

same view: "A corporation may be created in any place where there is not an existing corporation for municipal government, even where there has formerly been one, if it be now dissolved. But there cannot, at the same time, be two corporations in the same place, having the same or similar powers, privileges, and jurisdictions."[134] This rule seems to have been in force in Louisiana for some time, the state supreme court declaring in 1919: "It is impossible that the farmers . . . . should have contemplated in conferring the authority to create road districts on the police jury, that the police jury would undertake to include either the property of its entire parish or of any ward or any subdivision in more than one road district, since if that should be done, the road tax instead of being limited to a specific amount, may be as many times that rate as there are districts in which the property may be included, and the number of districts would appear to have no other limit than such as may be determined by the police jury."[135]

Two years prior to this decision, however, a federal district court hearing a case brought under the Fourteenth Amendment to the Constitution of the United States, refused to void school districts that overlapped road districts, and road districts that overlapped school districts, but did not touch upon the question of like districts overlapping each other.[136] Five years after the decision prohibiting the creation of more than one road district in the same area, the state supreme court applied the same rule to school districts, declaring that an ordinance creating new school districts within a parish school district was in violation of the existing law, where such newly created school districts overlapped existing districts.[137] A slight modification of the existing rule is apparent, though, in that the court seemed to allow small school districts to exist within a parish school district.

Two Louisiana constitutional provisions, upon which is based the rule described above, have operated in the past, by virtue of their judicial interpretation, to prohibit the creation

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[134] Willcock, *Municipal Corporations*, sec. 27. Also see McQuillin, *Municipal Corporations*, 2nd ed., sec. 283. It is a self-evident proposition that two lawfully and fully organized public or municipal corporations cannot have jurisdiction and control at one time of the same population and territory, and exercise like or similar powers in the same boundaries.

[135] *K. C., S. & G. Ry. Co. v. Skinner*, 81 So. 748, 145 La. 25 (1919).

[136] *Lancaster v. Police Jury*, 254 F. 179 (1917).

[137] *Hinton v. School Board*, 99 So. 528, 155 La. 666 (1924).

of more than one district of the same type within a particular area.[138]

The first places a limit on the millage of each special tax a district may levy for each particular purpose, and also a limit on the total millage for all of such purposes. The second provides that special municipal corporations may sell bonds and levy taxes in excess of those described above, the latter to provide for the ultimate retirement of the bonds, the proceeds of the bond issues to be used for additional aid for the purposes enumerated, so long as the total bonded debt of any particular area for all of these purposes does not exceed ten per cent of the total assessed valuation of all taxable property within the area in question. Thus, a special taxing district may levy all the special taxes it is legally authorized to levy and, having reached this limit, it may sell bonds and levy additional taxes for their retirement up to the bond limit specified. But, if a particular area has taxed and bonded itself up to both limits, is it stopped from going further? The constitutional limitation on bond issues is clear and concise in its language. The constitutional limitation on special taxation is, however, somewhat vague in its wording, and if liberally or freely interpreted it may allow a given area to exceed the apparently rigid tax limits through the multiplication of taxing districts of the same type in the same place.

In 1925 the supreme court of Louisiana opened the way for a liberalization of the taxing article of the constitution affecting special municipal corporations,[139] by declaring that any political subdivision "may levy taxes for the enumerated purposes, not to exceed five mills on the dollar for any one purpose nor twenty-five mills on the dollar for all such purposes," each political subdivision having the power to levy taxes up to the limit imposed without regard to the taxes levied in other subdivisions within the same territory; each political subdivision being a distinct entity for such purposes.[140] In the same year the supreme court reversed its previous position on road districts, declaring in part: "Our opinion is that it is immaterial that the lands included within the sub-road district are included within three existing road districts."[141] Five years later the same court applied this new

[138] *Const. 1921*, art. 10, sec. 10, as amended to date; art. 14, sec. 14, as amended to date.
[139] Art. 10, sec. 10, as amended to date.
[140] *L. & A. Ry. Co. v. School Board*, 103 So. 318, 157 La. 1046 (1925).
[141] *Brock v. Police Jury*, 105 So. 227, 159 La. 66 (1925).

rule to school districts by upholding the validity of a parish school board ordinance which provided for a certain overlapping of small school districts existing within a larger school district.[142]

There are two points which may have affected this change of front in the attitude of the court on the multiplication of the same type of district in the same area. In the above cited road district case, the court called attention to the fact that the period of grace during which suits of this character might be instituted had expired, twenty-two months having elapsed before the plaintiff brought suit. In the second place, in 1922 the state legislature provided that school districts might be consolidated and road districts might be consolidated.[143] Neither decision was clear as to the effect of the consolidation statutes upon the previous rulings of the court, nor as to their effect on statutes already in force, except that in both cases the decision did include a statement to the effect that the consolidation statutes repealed the whole or parts of all existing legislation conflicting with them. To date, then, this new rule seems to apply only to all school districts and to all road districts, although there does not seem to be any constitutional or statutory reason why it could not be extended to include all special municipal corporations. The only legal restraint on this new rule allowing more than one district of the same type within a given area seems to be the bond issue limitation which is rigidly applied by the courts. In two fairly recent cases it has prevented the creation of additional road districts within the same territories because the constitutional bonded limits of the areas in question would have been exceeded.[144]

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142 *Woodard v. School Board*, 126 So. 207, 169 La. 881 (1930).

143 *Acts of La.*, 1922, p. 208 and 1922, p. 51.

144 *State v. Police Jury*, 105 So. 97, 159 La. 58 (1925); *State v. Police Jury*, 106 So. 887, 160 La. 280 (1926). *Const. 1921*, art. 14, sec. 14 (f) as originally adopted provided: "no debt shall be incurred and bonds issued therefore by any subdivision hereunder *for any one of said purposes* herein provided, which, including the existing bonded debt of such subdivision *for such purpose* . . . shall exceed in the aggregate 10% of the assessed valuation of taxable property of such subdivision . . . ." *Acts of La.*, 46 of E. S. 1921, declared a bond limit of 10% of the taxable property *for all such purposes*. *Ibid.*, 11 of 1924, repealed this provision and followed the wording of the original constitutional provision. See *Covington Bank v. Covington*, 105 So. 382, 159 La. 389 (1925). But an amendment of 1926, *Acts of La.*, 201 of 1926 adopted 1926, in addition to adding irrigation districts to those enumerated in the original section, also changed the word *purpose* to *purposes*, thus restoring the intention of *Acts of La.*, 46 of 1921 and nullifying *Ibid.*, 11 of 1924 and the decision in the case cited above.

Conclusion

The significance of the development of special municipal corporations in Louisiana both as to kind and number, is now, perhaps, apparent. These districts, are in effect, rural quasi-municipalities, aiming to give in the main the same advantages to rural citizens of the state that municipal inhabitants enjoy. Their collective objectives may not be challenged. The method used in achieving them, that of creating separate and distinct taxing areas for each purpose, is, however, open to serious criticism.

Of the special municipal corporations described, nearly all are similar in many respects, yet there are a sufficient number of differences which merit a general comparison.

With the exception of levee districts and school districts, all quasi-municipal areas are creatures of the police jury, the latter acting either on its own initiative or by petition of the necessary number of resident taxpayers. In all instances public hearings must be held for the purpose of considering any conflicting views or testimony. Wherever the police jury is the governing authority of the special district, an election must ratify their creation of the district. For other districts the open hearing is sufficient.

Police juries are the governing authorities of all road and sewerage districts within their respective parishes; parish school boards are the governing bodies of all school districts within their respective parishes; the remaining special districts have their own separate governing authorities. Police juries and parish school boards are selected, one member of each from the wards into which parishes are divided; boards of road supervisors, agents of their police juries in directing the affairs of road districts, and boards of sewerage district supervisors, agents of their police juries in directing the affairs of such districts, are appointed by the various police juries; two of the five commissioners of gravity drainage districts and the same number from waterworks districts are appointed by the governor, while the other three members of each type of district are appointed by the police jury or juries affected; the five commissioners of artificial drainage districts and the five commissioners of irrigation districts are all appointed by the police jury or juries affected; and the boards of levee commissioners, which vary in number, are all

appointed by the governor. All governing bodies exercise the usual executive and administrative powers necessary to carry out the objects of their districts, and, in addition, order and conduct all the necessary special elections, and promulgate all returns.

Special taxes and bond issues, subject to the constitutional restrictions herein described, must be voted by a majority in number and amount of property owned of the qualified taxpayers before they become valid. Parishes may assume the outstanding indebtedness of irrigation, road, and drainage districts within their boundaries when authorized to do so at elections held for that purpose, subject, of course, to the constitutional bond restrictions.

Except in the case of artificial drainage districts, the assessment of property in all special districts for the purpose of taxation is done by the parish assessor, and in all cases taxes are collected by the sheriff as ex officio tax collector.

A multiplication of special taxing and bonding areas has resulted from these constitutional and legislative provisions.[145] Aside from the fact that extra duties are thrust upon police juries, attention should be directed to the large number of governing bodies operating within a given area.[146] Special elections must be held to decide innumerable questions, and the costs are borne by the districts themselves. Special importance should be attached to the possibility of overlapping districts and boundary lines and the possible excessive taxation of helpless minorities, for the rule that all bonds and special taxes must be voted by the interested taxpayers has not proven a sufficient safeguard. The lack of any form of real state financial supervision is particularly noticeable; the state supervisor of public accounts merely sees that the accounts of special municipal corporations are correct or balance, there being no real audit.

[145] See Appendix A.

[146] Governing bodies	1932	1930	1928	1926	1920	1918
Police juries (A)	64	64	64	64	64	64
Parish school boards (A)	64	64	64	64	64	64
Levee boards	18	16	16	16	16	16
Drainage boards	158	151	142	134	104	91
Waterworks boards	2					
Navigation boards	1	1	2	2	2	
Total local govt. boards	307	296	288	280	250	235

(A) Includes Parish of Orleans and City of New Orleans. Compiled from the *Reports of the Supervisor of Public Accounts*, pp. I-IV, 1918-32.

A few criticisms based upon the above general observations and looking toward future changes may be considered here. The parish has long been considered the real unit for state administration and for local government purposes. There is, however, a noticeable trend leading to a development away from this principle. Since most of the purposes of the quasi-municipal corporations herein considered are really of a parish-wide nature, wherever possible, the parish should perform these functions and the special districts should be abolished. This has already been accomplished with regard to junior colleges and navigation canals, and parishes are authorized to assume the outstanding debts of road, drainage and irrigation districts within their boundaries. The same principle should be followed with all other special districts except with regard to levee districts which might better be consolidated under the state. For a state with only sixty-four parishes, or counties, the rapidly increasing number of local areas and governing bodies seems excessive.

Second, local areas can no longer be expected to safeguard their own interests even though exercising a check through elections to ratify special taxes and bonds, since the constitutional and statutory financial restrictions have themselves been of little value. The police jury and the parish school board both publish their annual budgets, but they are general and contain little real information. The supervisor of public accounts, through his accountants, merely sees that all local rural accounts are correct, in other words, that they balance. He does not conduct a thorough audit, neither does he attempt to discover irregularities which may exist but which may not be apparent at the time. He must, of course, report glaring and flagrant irregularities, but these are few in number. A system of state supervision similar to that employed in Indiana should be set up under the direction of the state supervisor of public accounts, who is appointed by and responsible to the governor alone, and he should be given real authority to act.

If, on the other hand, the feeling for local freedom and local autonomy persists to the extent that it proves impossible to adopt the rather centralizing provisions mentioned above, rural municipalities of the type advocated by T. B. Manny,[147]

[147] Manny, T. B., *Rural Municipalities*, passim.

each created for nearly all the purposes for which the large number of special districts are now created, may result in solving the problems of rural areas in Louisiana.

CHAPTER XV

Other Local Functions and Activities

Aside from the more usual and important parish and municipal functions, there are other activities carried on by local governments which also deserve special mention. Changing conditions, higher standards of living, new and broader conceptions of the field of governmental activity, have practically forced our governmental agencies to broaden their scope of jurisdiction and embrace new fields of action. The following functions and activities of local governments are what we might call developmental, for in most instances they are of comparatively recent origin, and popular interest in Louisiana is just now becoming centered upon them.

The developmental functions and activities of local governments in Louisiana are in many cases authorized for parishes and municipalities alike. There are some, however, that are peculiar to the parish and some that are peculiar to the municipality.

Parishes and Municipalities, Health

The Constitution of 1921 laid a mandate on the legislature requiring it to create a state board of health, and boards of health for each parish and each municipality.[1] The legislature thereupon provided for the creation of boards of health, defined their powers and duties, and subordinated all parish and municipal boards to the state board.[2]

The state board of health consists of a president and eight members, each of the latter being appointed by the governor with the advice and consent of the senate, for a term of four years from one of the eight congressional districts of the state. The president is the state health officer and is in charge of the state department of health. Board members are

[1] *Const. 1921*, art. 6, sec. 11; *State v. Police Jury*, 108 So. 104, 161 La. 1 (1926).
[2] See *Acts of La.*, 79 of E. S. 1921, as amended by *Ibid.*, 296 of 1926 and 126 of 1928. Also see *Ibid.*, 192 of 1898, 44 of 1900, 130 of 1912, and 247 of 1918.

on a per diem basis of fifteen dollars per day and an equal amount for traveling expenses, while the president receives six thousand dollars per year.

Meetings are held at least once in every three months and on special call by the president. A quorum consists of five members.

The state board of health has exclusive jurisdiction, control, and authority over maritime quarantine, water supply, and waste disposal sanitation activities within the state; and supervisory powers over land quarantines and the care and control of communicable diseases in the state. It has prepared a sanitary code covering these phases of health work, including slaughter houses, cold storage plants, and places where food and meat are sold. It has provided regulations: for reporting and caring for communicable diseases; for the reporting and tabulation of vital and mortuary statistics; for vaccination facilities; for the inspection of food and meats; and for general public health matters and sanitary or hygenic subjects which cannot in the opinion of the board be regulated by local health boards.[3] Local ordinances in conflict with the sanitary code are null and void.[4]

Parish boards of health consist of five members, three of them being licensed and registered physicians, one of whom is elected as chairman; one member, who is in educational work; and one member without regard as to vocation. All board members are appointed by police juries and serve without compensation or salary. Municipal boards of health consist of three registered and licensed physicians; one member who is of the municipal government; and one member without limitation as to vocation. They are appointed by the municipal governing authorities and serve without compensation or salaries. All local health board members serve coequal terms with their appointing authorities.

Each municipal board and each parish board appoints a health officer with the advice and consent of the state board of health. Health officers must be registered licensed physicians, and they execute the sanitary laws of the state and carry out the rules and regulations of their local boards. The parish coroner may be either or both parish physician and parish health officer. When the latter is the case the police

[3] *Board v. Susslin*, 61 So. 661, 182 La. 569 (1918).
[4] *N. O. v. Ernst*, 99 So. 891, 155 La. 426 (1924).

jury ordinarily fixes a salary in addition to the regular coroner's fees. Health officers appoint their own assistants and personnel to serve during their pleasure. Salaries and expenses are regulated by the respective police juries and municipal governments.[5] The local health officer may be removed thirty days after official notice is given on agreement between the local and state boards of health.

If the local governing authority should fail to select a board of health within one month after its second regular meeting, the state health officer and the state board of health may select the new members.[6]

Local boards of health enact health and sanitary ordinances, regulate drainage and ventilation, regulate trades and businesses injurious to the public health, the disposition of wastes and garbage, and the erection and arrangement of buildings as to health and sanitation.[7] They may demolish buildings when necessary for the public health.[8] They keep vital statistics, report monthly to the state board, and furnish other information when required to do so. They may control all local matters not affecting other sections as they think best. No quarantine may be established without the approval of the state board, but local boards may regulate immediately all suspicious and emergency diseases, subject to later review and direction by the state board. All local health board regulations are promulgated as are parish and municipal ordinances and they have the same effect before the courts of the state.

Local expenses are borne by the parishes or municipalities, and each year the local governing authority must provide in its budget for health and sanitary expenditures.

In view of the limited financial resources of a number of the extremely rural parishes permission was granted for the formation of health districts composed of two or more parishes, the parishes concerned to bear jointly the costs of the districts. Nothing came of this, however, so in 1926 the legislature provided for state and federal aid to full time parish health units, the state binding itself to contribute not less

[5] State v. Police Jury, *supra*. The salary of a parish health officer is a necessary expense and its payment may be enforced by writ of mandamus.
[6] *State v. Dowling*, 104 So. 624, 158 La. 706 (1925); *State v. Police Jury*, 108 So. 104, 161 La. 1 (1926).
[7] *Naccari v. Rappelet*, 44 So. 18, 119 La. 272 (1908). This power is legislative in character and the courts have no right to interfere, except in clear cases of abuse.
[8] Board v. Sussiin, *supra*.

than twenty per cent of the cost. The response was almost instantaneous. In 1930 there were thirty-one such health units, twenty-one of them having been organized after 1927.[9] The budgets are made up of fifty per cent from the parish, twenty-five per cent from the state, and twelve and one-half per cent each from the United States Public Health Service and from the Rockefeller Foundation.

The population of Louisiana in many places is especially susceptible to malaria, typhoid, and yellow fever. Other diseases which are causing considerable concern are pelegra, tuberculosis, and various venereal infections. Health units giving full time service are the only means by which these diseases may be brought under control, and the work of these organizations since 1927 is especially noteworthy.[10]

Parishes and municipalities may also vote special taxes for the establishment of tuberculosis hospitals and clinics, and parish or regional sanitariums for the treatment of tuberculosis may be established.[11]

The reaction of parishes and municipalities to the health unit idea indicates that the lack of local interest in health activities in the past was chiefly due to inadequate finances. In some instances parish school boards and municipal governing authorities are cooperating in bearing the expenses of the health unit, thus centralizing the control of health and sanitation in a single large area in the hands of one body and one health organization. Health and sanitation is primarily a state function, as is shown by its retention of the power to supervise and control in a final sense. With state aid, local health work can go much further.

Charities and Corrections

Local governmental subdivisions of Louisiana must, under existing conditions, provide for the care of the poor and orphans, and also for the safe-keeping of criminals and enemies to the local public peace. Recent developments in the study of social welfare work have resulted in questioning the advisability of local governmental units performing these services

[9] *Biennial Report of the State Board of Health*, 1930, pp. 6 *ff.*

[10] See *Ibid.*, 1928-1930, and *Quarterly Bulletins of the State Board of Health.*

[11] *Acts of La.*, 296 of 1926 and 60 of 1930. East Baton Rouge Parish appropriated ten thousand dollars to Greenwell Springs Tuberculosis Sanitarium in 1931 on condition that the latter care for twenty patients from the parish continuously. Biennial Rept., *op. cit.*, p. 26.

because of their inadequate finances and facilities.[12] On the contrary, it is advocated that this function is essentially one for the state to undertake and develop. Before this objective can be realized, however, a period of transition will confront the public. During this period the state should supervise, control, and aid in a financial way in these pressing problems of the moment.

As a means of supervising local activities in welfare and correctional work the state board of charities and corrections has been created with powers of a visitorial character over all state, parish, and municipal penal and charitable institutions; and over all private orphan asylums, hospitals, and charitable institutions in the state.[13] Members of the board receive their expenses only.

Police juries are required to provide for and support all infirm, sick, and disabled paupers residing within their parishes, outside of municipalities which are exempt or partially exempt from parish taxation.[14] Municipal corporations within the class mentioned are required to provide for the care of their own poor and indigent. Funds for these purposes are provided in parish and municipal budgets. In parishes containing cities of twenty-five thousand to one hundred thousand inhabitants, police juries may set aside ten per cent of all fines and forfeitures of bonds in criminal cases collected by the district court, and the city authorities may do the same thing with respect to municipal courts, for additional welfare relief.[15] The parishes and municipalities concerned may combine their funds if they so desire. Finally, police juries are authorized to provide for the support of crippled persons more than fifty years of age and in necessitous circumstances.[16] In 1932 New Orleans was experiencing difficulties in financing welfare work and was authorized to levy a ten per cent tax on all amusement admission sales of more than ten cents.[17] This tax, unless re-levied, may last for only a two year period.

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[12] Fairlie and Kneier, *op. cit.*, pp. 275-301; Hoffer, F. W., *Counties in Transition*, Chap. 3.

[13] *Const. 1921*, art. 6, sec. 10. Also see Wisner, E., *Public Welfare Administration in Louisiana*.

[14] *Acts of La.*, 43 of 1880. Also see *Ibid.*, 184 of 1934, requiring parishes to provide for needy adult blind persons.

[15] *Ibid.*, 235 of 1916.

[16] *Ibid.*, 52 of 1932.

[17] *Ibid.*, 138 of 1932.

Insofar as poor relief is concerned, most parishes and municipalities make direct grants to private relief agencies, shifting the administrative burden to those organizations.[18] The same plan is followed with respect to medical attention for those unable to pay for such services.[19]

The state has realized the necessity of medical attention to the poor and has established two excellent charity hospitals, one in Shreveport and one in New Orleans.[20] All police juries are authorized to appropriate not more than one thousand dollars per year to one of these institutions, whereupon its destitute citizens in need of medical services may make use of the nearest hospital.[21]

In addition to the two state charity hospitals for cases of general character, institutions supported and operated by the state for more specialized cases have also been established. There are two hospitals for the insane, a training school for the feeble-minded, one school for the deaf, two schools for the blind, and two industrial schools for delinquent boys and girls.[22]

Police juries are required to furnish parish jails and must regulate and provide for their organization.[23] The sheriff is in charge of the jail of his parish and must provide for feeding and clothing all prisoners.[24] The care and sanitary conveniences are supervised by the state board of health. The coroner is ordinarily parish physician and attends prisoners in need of medical attention.

Parish prisoners may be required to work out their fines, or sentences on roads or levees within the parish.[25] Parishes within the same judicial district may also combine and work

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[18] See *Budgets* of East Baton Rouge Parish, Baton Rouge, and New Orleans. In 1930 East Baton Rouge Parish granted three thousand two hundred dollars to relief and orphan institutions, and provided six thousand dollars for health and charitable work by the parish. Also see *Acts of La.*, 16 of E. S. 1934, authorizing parishes and municipalities to levy and collect license taxes on places of amusement and entertainment and providing for the dedication of the proceeds to the unemployed or to unemployables under the control of the Emergency Relief Administration; and *Ibid.*, 18 of E. S. 1934, authorizing parishes and municipalities to levy and collect, under certain conditions, taxes on newspapers and periodicals, and dedicating the proceeds to the same use and agency. To these sources was added another by *Ibid.*, 81 of E. S. (2nd) 1934, authorizing parishes and New Orleans to levy a one cent per gallon tax on gasoline, to be used exclusively for relief purposes.

[19] See *Ibid.* In 1930 East Baton Rouge Parish granted three thousand two hundred dollars to hospitals for charitable work.

[20] See *Acts of La.*, 40 of 1876, as amended, and 145 of 1890, as amended.

[21] *Ibid.*, 211 of 1926 and 181 of 1912.

[22] See *Reports of the State Board of Charities and Corrections*, 1930-1934.

[23] *R. S.*, secs. 2746 and 2884.

[24] *Ibid.*, secs. 2883-2846; *Acts of La.*, 78 of E. S. 1877. For Orleans Parish see *Acts of La.*, 55 of E. S. 1877.

[25] *Acts of La.*, 88 of 1878 and 121 of 1888; *State v. Brannon*, 34 La. Ann. 942 (1882).

their prisoners together on projects undertaken by the parishes in question.[26]

Each municipality is required by its charter to maintain and support a local jail.[27] Sometimes they make arrangements for their prisoners to be confined in the parish jails, paying a per diem amount agreed upon between the parishes and municipalities.

Parochial inability to provide for and maintain adequate jails or prisons probably prompted the legislature to provide for district prison farms, each farm to be jointly supported and operated by the parishes composing the judicial district.[28] In spite of the necessity of joint parish action in a function of this character, to date no such prison districts have been created. Since the plan is optional, local feeling and jealousy must have been responsible for this lack of interest. It is urged, however, that this is the only real solution of the problem, and the plan should also include all municipalities contained in a district. In this way obsolete and inadequate jails and prisons would be done away with, and satisfactory institutions provided.

Public Utilities

Public utilities are businesses affecting the public and hence subject to public control for the common good.[29] The control or regulation of public utilities is based upon the police power of the state. The police power, in its application to this phase of government, is the right of a state, or a state functionary acting under delegated authority, to prescribe regulations for the convenience and comfort of the community.[30] It is known where and when it begins, but not where and when it terminates. Under it a man's property may be taken from him for the public good. This power to regulate does not include the power intentionally to suppress, but where the police power is exercised with the intention of regulating a business subject to its dominium, it is lawfully exercised even though the business may thereby be made unprofitable and fail for lack of support.[31]

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[26] *Ibid.*, 200 of 1926.
[27] See, for instance, *Ibid.*, 186 of 1898, as amended, and *Budgets* of Baton Rouge and of New Orleans.
[28] *Acts of La.*, 189 of 1928.
[29] *Munn v. Illinois*, 94 U. S. 113 (1876).
[30] *Bass v. State*, 34 La. Ann. 494 (1882); *Gas Light Co. v. Hart*, 4 So. 215, 40 La. Ann. 474 (1888).
[31] *Shreveport v. Schulsinger*, 36 So. 870, 113 La. 9 (1904).

As a result of this public and legal attitude with respect to regulating public untilities, the latter have sought to secure certain benefits to themselves by concluding contracts with their regulators, sometimes for very long periods. In Louisiana, however, a municipality is prohibited from making an irrevocable contract, which prevents it from thereafter regulating the rates of public utilities.[32] Likewise, where a city has bound itself by contract as to rates to be charged, the state is not so bound, and the rates are subject to change at the pleasure of the legislature,[33] since a city may not contract away its police power.

Parishes and municipalities of Louisiana are vested with rather broad powers in their relations with public utilities. These powers may be examined from three points of view: (1) the regulation of public utilities, (2) local financial aid to public utilities, (3) local ownership and operation of public utilities.

The constitution vests the powers of supervision, regulation, and control over street railways, and gas, electric light, heat, power, waterworks, or other local public utilities in town, city, or parish governments.[34] These powers, though, result only from a positive and unmistakable delegation.[35]

In case a parish or municipality desires to surrender its regulatory powers to the state public service commission it may do so if the majority of the qualified voters of the area in question so decide in a special election held for that purpose.[36] Later, if the same parish or municipality wishes to reinvest itself with these powers it may do so in the same manner. In either case the election may be called by the governing authorities. An election must be called, however, when petitioned for by ten per cent of the number of voters taking part in the last gubernatorial election.

Police juries and the governing authorities of towns and cities may establish ferries and toll bridges within their lim-

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[32] *Baton Rouge v. O'Keefe*, 280 F. 92 (1922); *Baton Rouge v. Waterworks Co.*, 20 F. (2d) 895 (1929).

[33] *Shreveport v. Gas Co.*, 92 So. 865, 151 La. 864 (1922).

[34] *Const. 1921*, art. 6, sec. 7; *Acts of La.*, 116 of E. S. 1921; *Gas Co. v. Hale*, 125 So. 180, 169 La. 800 (1929).

[35] Shreveport v. Gas Co., *supra.*, and *Winchester v. Winchester Waterworks Co.*, 251 U. S. 192 (1919). But see *Acts of La.*, 6 of E. S. (2nd) 1934, repealing all legislation permitting local regulation of public utilities other than those owned by the public.

[36] *Const. 1921*, art. 6, sec. 7, *Acts of La.*, 116 of E. S. 1921.

its, fix the rates, and regulate their operation.[37] Ferry and toll bridge leases must be let to the highest bidders after publication of notice for bids, but no lease may run for more than ten years.[38] Where a stream forms a boundary line between parishes the police juries concerned have concurrent jurisdiction.[39] In no case, however, may a parish or municipality violate the "interstate commerce clause" of the National Constitution.[40]

Police juries and the governing authorities of municipalities may grant franchises for telephone, telegraph, electric light, heat, and power lines, and for gas and water mains within their limits.[41] No franchises of this character are to be granted over state highways without the consent of the highway engineer. These franchises are to be sold to the highest bidder after public notice is given,[42] and the proceeds must be used for roads, streets, or alleys. Municipalities, other than New Orleans, of more than twenty-five thousand population may grant these franchises, however, only after a special election has been held and a majority of the votes cast are in favor of letting the franchise.[43] Where the city charter is silent as to special elections or referenda, it appears that none are necessary. Municipal franchises are also limited to twenty-five years duration. Parish and municipal consent, through their governing bodies, must be acquired before sewerage, water or drainage works may be constructed along roads, streets, and alleys.[44] Parishes may grant franchises to railways using power other than steam, and municipalities may grant franchises to all railways and railroads.[45] In New Orleans, all public utilities other than those owned and operated by the city are regulated by the commission council

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[37] *R. S.*, sec. 1501; *Acts of La.*, 182 of 1906 and 284 of 1928. Also see powers of municipalities under *Acts of La.*, 136 of 1898. A police jury has no right to grant a franchise to a ferry from a point within the parish to a point within the limits of a municipal corporation without first obtaining the latter's consent. *Bisso v. Mayor and Council*, 124 So. 308, 169 La. 122 (1929). See *Acts of La.*, 132 of 1924, which grants Baton Rouge and Port Allen the exclusive right and privilege of establishing ferries on the Mississippi River between those two points, and provides for equal profit and benefit. As a result of its revenues from this franchise Port Allen is known as the "taxless town."

[38] *Ibid.*, secs. 1502 and 2758; *Acts of La.*, 160 of 1924.

[39] *Ibid.*, secs. 1503 and 2759.

[40] *Long v. Miller*, 262 F. 862 (1919).

[41] *Acts of La.*, 136 of 1898 and 127 of 1924.

[42] *Realty Co. v. Police Jury*, 58 So. 578, 127 La. 818 (1910).

[43] *Acts of La.*, 76 of 1914 and 76 of 1928; *Connell v. Baton Rouge*, 96 So. 657, 153 La. 798 (1923) *Wachsen v. Lake Charles*, 111 So. 177, 162 La. 823 (1926).

[44] *R. S.*, sec. 689; *Acts of La.*, 125 of 1880 and 5 of 1916; *Shreveport Co. v. Shreveport*, 47 So. 40, 122 La. 1 (1908); *Waterworks Co. v. Pub. Serv. Comm.*, 100 So. 710, 156 La. 539 (1924).

[45] *Ibid.*, also 188 of 1902 and 136 of 1898.

through granting indeterminate permits of public convenience and necessity.[46]

The second way in which parishes and municipalities may have contacts with public utilities is through their authority to levy taxes and give financial aid to railways, water systems, and electric light, heat, or power systems after an affirmative vote of a majority in number and amount of the affected property owners qualified to vote.[47] Taxes of this nature are limited to a ten year period. Under the constitutions of 1868, 1879, and 1898, considerable aid was advanced to organizations of this character, but since then, due to the trend toward local ownership and operation of these activities, few if any grants of this character were made.

The third type of relation between local governments and public utilities lies in the field of public ownership and operation, and in this field the municipality predominates. Parishes or special districts may own and operate waterworks, irrigation, and gas plants only.[48] The first two have been described elsewhere. Parishes and municipalities are authorized to expropriate property for and may own and operate gas plants. The governing authorities are authorized to levy a tax of not more than five mills on the dollar of the assessed value of property in order to raise the necessary funds after a special election has been held and the action affirmed by a majority in number and amount of property owned of the qualified taxpayers of the community. A gas commission of three members appointed by the governing body concerned has full control of the utility.

Municipalities are authorized to own and operate electric light, gas, waterworks, street railway, interurban railway, and other local public utilities and to expropriate necessary property for their use in these activities.[49] Originally this broad grant of power was held not to include ice factories, as they were not governmental in character, but the *Constitution of 1921* expressly authorized municipalities to own and operate them.[50] There are two ways in which these activities may be

[46] *Ibid.*, 94 of E. S. 1921.
[47] *Const. 1921*, art. 14, sec. 19; *Trust Co. v. Smart*, 25 So. 448, 51 La. Ann. 416 (1899); *Reynolds v. Police Jury*, 11 So. 286, 44 La. Ann. 863 (1892).
[48] *Acts of La.*, 21 of 1920 and 70 of E. S. 1921. Also see Chapter on Special Municipal Corporations.
[49] *Acts of La.*, 136 of 1898, as subsequently amended, 111 of 1900, and 128 of 1918; *Waterworks Co. v. Lake Charles*, 30 So. 289, 106 La. 65 (1901). Also see *Acts of La.*, 49 of 1924.
[50] See *Ice and Coal Co. v. Ruston*, 66 So. 262, 135 La. 898 (1914) and *Const. 1921*, art. 14, sec. 18.

financed. First, special taxes may be voted and bonds issued based on the tax. This was the original method provided, and was used wherever a utility was locally owned and operated but it was not popular. The second method allows the municipality to issue bonds against a mortgage on the lands, buildings, machinery, and revenues of the utility, and the municipality is expressly excepted from any charge of this debt against its other revenues and income.[51] This method is much more popular and is now followed in most instances.

In 1926, seemingly in answer to a popular demand for bridges instead of ferries over the numerous rivers, bayous, and other waterways of the state, the legislature authorized municipalities and parishes to acquire bridges necessary as a public utility by expropriation or by building them.[52] It is doubtful if many local areas availed themselves of this permission and still more doubtful if there are any of these bridges still under local control, due to the extensive changes brought about recently in the state highway system.[53]

It is difficult to gauge the success of public ownership and operation of utilities in Louisiana without a personal survey being made of the municipalities engaged in those activities. In 1926, however, an act of the legislature authorized all parishes and municipalities to sell or lease any utility owned and operated by them.[54] This may be an indication that public ownership and operation of public utilities has not been as successful as it was expected to be.

New Orleans owns and operates practically all of the important public utilities within its limits. They include the public belt railway, and the sewerage and water systems.[55] Electricity and gas utilities are privately owned and operated. These activities are under the mixed jurisdiction of the commission council, the board of liquidation, the public belt commission, the sewerage and water board, and the New Orleans Public Service.

The regulation of public utilities follows policy. The question of where that policy is to be determined is decided by the state.[56] Public utilities of an intrastate or state-wide char-

[51] *Const. 1921*, art. 14, sec. 14, par. m; *Gisclard v. Donaldsonville*, 106 So. 287, 159 La. 788 (1925); *McCann v. Morgan City*, 169 So. 481, 178 La. 1068 (1932).
[52] *Acts of La.*, 332 of 1926.
[53] See Chapter on Highways, Roads, Streets and Improvements.
[54] *Acts of La.*, 88 of 1926.
[55] See *Ibid.*, 159 of 1912, as amended, (Charter Act).
[56] See Upson, L. D., *Practice of Municipal Administration*, pp. 522-552.

acter, and not of a local character, are subject to regulation by the public service commission under the control and supervision of the state legislature. Purely local public utilities are thus under local direction, and as long as the principle of local autonomy or home rule prevails in Louisiana this condition will continue. Local government areas should, however, have the benefit of counsel and advice by the state public service commission in solving their many problems. To date not very much in this direction has been accomplished.

Navigation and Airports

The close proximity of the larger industrial or manufacturing centers of Louisiana to the Gulf of Mexico renders it advisable in some instances to provide for deep-water navigation from the gulf to such centers by means of canals or waterways.[57]

Originally special districts within parishes were authorized to undertake projects of this nature,[58] but the financial burden was too heavy so the parish was made the unit of administration for constructing them. Municipalities may, however, improve the navigable waters within their limits at their own expense.[59]

Parishes may acquire property for navigation canals, channels, and waterways, and may issue bonds necessary for their acquisition or construction when authorized to do so by the qualified taxpayers of the parish at a special election. The police jury is the governing authority of such an enterprise, but appoints a board of advisors composed of three taxpaying citizens to assist in letting contracts, to supervise the works authorized, and to advise on expenditures.

After all work is accomplished and their obligations retired, navigation districts may be dissolved.[60]

In answer to the needs of private and commercial airplane owners, and following the rapid development of airmail and transport lines, the legislature has authorized parishes and municipalities to expropriate or otherwise acquire private

[57] See *Const. 1921*, art. 14, secs. 6 and 30 as amended 1924, 1928, and 1930; *Acts of La.*, 62 and 68 of E. S. 1921, and 58 of 1926. This resulted in a navigation district composed of Calcasieu Parish, which is now termed The Lake Charles Harbor and Terminal District.

[58] *Smith v. Police Jury*, 96 So. 824, 153 La. 961 (1923); *Union Sulphur Co. v. Parish*, 96 So. 787, 153 La. 857 (1923).

[59] *Acts of La.*, 58 of 1926.

[60] *Ibid.*, 274 of 1926.

property within or without their territorial boundaries for airports and landing fields.[61]

Police juries and municipal governing authorities are authorized to own, operate, and improve airports, flying fields, parks, and bombing ranges; and they may donate any or all such property to the National Government. Certificates of indebtedness may be issued and special taxes may be imposed to finance such projects.

Cultural Betterment and Recreation

There is need today for a type of education other than the formal one secured in our educational system. The public library is the most universal institution for cultural betterment. Recreation is another of the developmental functions of local communities and, in a sense, is coordinate with cultural activities in that it provides a method of renewing tired minds and bodies so that the individual may lead a normal and happy life in his community.

Police juries and governing authorities of municipalities may establish public libraries. They must do so when petitioned by twenty-five per cent of the qualified property owners. Two or more parishes, or a parish and municipalities within its territories, may join together and support such a project.[62] All parish libraries must be established in the parish seats, and all municipal libraries must be within their respective limits. Either type of library may, however, have branch libraries.

The revenues for institutions of this character may be derived from the residue of the general parish or municipal tax, or bonds may be voted and special taxes levied for their retirement.

A board of control of five citizens, appointed by the governing authority of the area or areas concerned for five years, one member each year, control and supervise library activities. The president of the police jury or the mayor of the municipality are members ex officio.

Each city of twenty-five thousand population or more may build a municipal auditorium to be used for public gatherings,

[61] *Ibid.*, 225 of 1928, 5 of E. S. 1928, and 18 of E. S. 1930. Also see *Ibid.*, 46 of E. S. 1921 and 289 of 1928. These are public purposes and do not violate the "due process clause" of the United States Constitution. *Shreveport v. Pedro*, 127 So. 865, 170 La. 851 (1930).

[62] *Ibid.*, 86 of 1926.

entertainments, and conventions.[63] A special commission selected by the city council may have complete charge of its erection and use for the benefit of the city in the future.

Any city, town, or village may construct golf courses, and they and any parish may provide for playgrounds, recreation centers, and other forms of public entertainment by setting aside and dedicating public property or by purchasing or expropriating property for such purposes.[64] A system of supervised recreation in connection with these centers may be established under a recreation board composed of five or more members appointed by the governing body.

Two or more local government areas may combine for this purpose and school boards may join in the support of recreation projects.

Parishes

In a state devoted primarily to agricultural pursuits the parish has an important part to play in aiding farmers and stockmen.

Agriculture and Livestock

Police juries are authorized to purchase land and accept lands as gifts for the purpose of donating such property to the United States Department of Agriculture for agricultural experiment and research stations for scientific agricultural experiments and development.[65] Parish experimental farms are also authorized. They are to be used only for scientific purposes and in accordance with plans suggested by the state and United States agricultural officials.[66] Practically all of the experimental work of this character now carried on is in conjunction with agricultural high schools under the directions of the parish agent and the local high-school agricultural teacher with the advice of the National Government through its extension service.

In many parishes cooperative demonstration work, in addition to that of the parish agent, has been undertaken jointly with agents and representatives of the United States Department of Agriculture in the past.[67] Funds for this work must

[63] *Ibid.*, 114 of 1922.
[64] *Ibid.*, 200 of 1924 and 187 of 1934.
[65] *Ibid.*, 86 of 1928. Also see *Ibid.*, 86 of 1930 concerning the donation of two portions of land of Iberia Parish to the U. S. Department of Agriculture, presumably for the stock farm at Jeanerette.
[66] *Ibid.*, 145 of 1912; *State v. Hagen*, 67 So. 935, 186 La. 868 (1912).
[67] *Ibid.*, 69 of 1912, as amended by *Ibid.*, 15 of 1922 and 246 of 1924.

be voted by two-thirds of the members of a police jury and not more than two thousand five hundred dollars each year may be appropriated. It is extremely doubtful if many parishes take advantage of this provision now in view of their other financial necessities.

Police juries organize themselves into livestock sanitary commissions and enact and enforce ordinances for the suppression of contagious and infectious livestock diseases.[68] They employ veterinary surgeons to act with them and for them in killing animals infected with incurable and contagious diseases. No compensation whatsoever is paid to owners for the loss of such animals. In order to eradicate the fever tick, which causes heavy losses to stock-raisers in the state, many parishes have passed fence ordinances and dipping regulations so as to prevent the spread of this parasite.[69] Where stock is killed or permanently injured while being dipped under the supervision of the live stock board or its agents, compensation is allowed the owners and is paid by the parishes concerned.[70]

Conservation of Fish and Game

In order to aid the state department of conservation in its efforts to conserve the wild animal life of the state and the fish that form the diet and the basis of livelihood of a large portion of its population, parishes have been granted rather broad powers.

Any police jury may establish and maintain fish and game preserves.[71] Three commissioners, appointed by the police jury, supervise and govern the preserves of the parish with authority to make rules for their maintenance. Land and property may be acquired or expropriated; and dykes, dams, and canals may be built where necessary. Hunting and fishing licenses may be sold. All parish preserves are supervised by the state conservation department.

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[68] *Ibid.*, 147 of 1894. Also see *Ibid.*, 127 of 1916, 25 of E. S. 1917, and 6 of 1930.

[69] *State v. Malone*, 76 So. 790, 142 La. 331 (1917). Also see *Acts of La.*, 152 of 1934, and 6 of 1930, for the part played by the Louisiana State Livestock Sanitary Board.

[70] *Acts of La.*, 56 of 1918.

[71] *Ibid.*, 259 of 1926. Also see *Ibid.*, 169 of 1912 with respect to Natchitoches Parish preserves; 217 of 1924 for Caddo Parish preserves; and 43 of 1930 for Lake Bistineau Preserve.

With the consent of the conservation department police juries may even curtail beyond state regulations the "open season" on game.[72]

Municipalities—Building Regulations, City Planning and Zoning

The regulation of building activities, of a residential, commercial, or industrial character; planning for the future growth and expansion of municipalities; and designating areas of municipalities as residential, commercial, or industrial, more often termed zoning; are ordinarily considered by the layman as being of comparatively recent origin. As a matter of fact this is a false assumption insofar as Louisiana is concerned.[72a]

As early as 1842 New Orleans Municipality No. 1 purchased certain real estate within its territorial limits in order to improve the "cleanliness and salubrity" of the city and the "convenience of the streets" by dividing it into lots and streets and reselling it.[73] By 1897, under authority of its charter, New Orleans had prohibited the erection or construction of wooden buildings within particular areas of the city around which fire limits had been created.[74] This authority was in general, however, of a rather limited character, for the right of a city to preserve order, cleanliness, and sanitation, did not alone justify the prohibition of the erection of livery stables in a residential portion of the city, a livery stable not being a nuisance per se at that time.[75] In 1908 all municipalities with populations of one thousand or more were authorized to create fire limits within which the construction or repair of wooden buildings were prohibited.[76] They were also granted power to regulate the thickness of outside, or fire walls, and partition walls of all buildings. Two years later all Louisiana municipalities were authorized to condemn buildings or structures in a dilapidated or dangerous condition, and after due notice and a hearing before the council, and if appealed, a

[72] *Ibid.*, 278 of 1926.

[72a] Mention should be made here of the fact that parishes are now authorized to plan for the future. See Chapter on Parish Government, section on Powers. As far as the writer has been able to ascertain, no parish has done very much in this field, except, perhaps, Caddo, East Baton Rouge, and Jefferson parishes.

[73] *Mun. No. 1 v. McDonough*, 2 Rob. 244 (1842).

[74] *State v. O'Neil*, 22 So. 852, 49 La. Ann. 1171 (1897).

[75] *Patout v. New Iberia*, 70 So. 616, 138 La. 697 (1916).

[76] *Acts of La.*, 234 of 1908.

review by the district court, to demolish the buildings or structures assessing the costs against the owners.[77]

These few isolated illustrations indicate that the beginning of municipal authority to plan or zone is not recent, although its development has been most rapid within recent years.

In the past, one of the greatest limitations on zoning provisions was the "due process" clause of the United States Constitution. Today the United States Supreme Court takes a rather liberal attitude in the interpretation and construction of that clause in this connection. In the first place, it has held that all zoning measures must find their justification in the police power exerted in the interest of the public.[78] In the second place, the governmental power to interfere by zoning regulations with the general right of the landowner by restricting the character of use is not unlimited, and such restrictions cannot be imposed if they do not bear a substantial relation to the public health, safety, morals, and general welfare.[79] Finally, legislatures may not, under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities.[80]

The *Constitution of 1921* makes an outright grant of zoning authority to municipalities.[81] All municipalities of the state are authorized to zone their territory; to create residential, commercial, and industrial districts; and to prohibit the establishment of places of business in residential districts.[82] Three years prior to the adoption of the *Constitution of 1921* the legislature had authorized New Orleans and Shreveport to enact zoning and building regulations of a general character.[83] In 1926 this authority was extended and amplified, and all municipalities were brought in under the scope of these grants of power.[84]

For the purpose of promoting the health, safety, morals, or general welfare of the community, the legislative body of any incorporated city, town, or village is authorized to regulate

[77] *Ibid.*, 175 of 1910 and 98 of 1928.
[78] *Euclid v. Ambler Realty Co.*, 272 U. S. 365 (1926).
[79] *Nectow v. Cambridge*, 277 U. S. 183 (1928).
[80] *State v. Roberge*, 278 U. S. 116 (1928).
[81] *Const. 1921*, art. 14, sec. 29; *State v. Harrison*, 114 So. 159, 164 La. 564 (1927).
[82] *State v. McDonald*, 121 So. 618, 168 La. 172 (1929). The authority of a city to enact a zoning ordinance, under this section, necessarily carried with it the power to enforce such ordinances by civil or criminal process.
[83] *Acts. of La.*, 27 of 1918.
[84] *Ibid.*, 240 of 1926.

and restrict the height, number of stories, the size of buildings and other structures;[85] the percentage of the lot that may be occupied; the sizes of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.[86] The local legislative body may, for any or all of these purposes, divide the municipality into districts, the number, shape, and area of which are left to its discretion.[87] Within these districts it may regulate and restrict the erection, construction, alteration, or use of buildings, structures, or land.[88] These regulations must be uniform for each class or kind of buildings throughout each district, but regulations of one district may differ from those in other districts.

Regulations of this character must be made in accordance with a comprehensive plan,[89] and must be designed to lessen congestion in public streets; to secure safety from fire; to promote health and the general welfare; to provide adequate light and air; to avoid undue concentration of the population; and to facilitate adequate transportation systems, water supplies, sewerage, schools, parks, and other public requirements. Among other things, reasonable consideration should be given to the character of the district and any peculiar quality it may have for particular uses, and with a view to conserving the value of the buildings and encouraging the most appropriate use of property throughout each municipality.

The legislative body of each municipal area provides for the method by which the regulations, restrictions, and boundaries of districts are made, and for their amendment. No regulation or boundary may become effective, however, until

[85] In 1928 the state supreme court, citing *Welsh v. Swasey*, 214 U. S. 91 (1909), held that "aesthetic considerations alone do not justify an exercise of the police power to limit a person's right to use his property as he sees fit." It is said, though, that if the primary consideration for the enactment of an ordinance limiting an individual's right to use his own property is a substantial consideration of public health, safety, comfort, or general welfare, considerations of taste and beauty may also enter in. *State v. N. O.*, 97 So. 440, 154 La. 271 (1923).

[86] *State v. N. O.*, 109 So. 916, 161 La. 1108 (1926); *State v. McDonald*, 121 So. 618, 168 La. 172 (1929); *N. O. v. Abattoir*, 96 So. 118, 153 La. 536 (1923).

[87] *State v. Harris*, 105 So. 83, 158 La. 974 (1925). A zoning ordinance of Shreveport prohibiting the erection of business buildings in any "recognized residential district," instead of by metes and bounds, was held invalid as failing with reasonable certainty to define the district. Also, a zoning ordinance prohibiting the erection of a business building in a residential district which was described as "that portion of the city where any block of any street is occupied exclusively for residential purposes," was held invalid as failing with reasonable certainty to define a residential district.

[88] *State v. N. O.*, 97 So. 440, 445, 446; 154 La. 271, 287, 288, 289 (1923); *State v. Jacoby*, 128 So. 314, 168 La. 752 (1929).

[89] *Bultman Co. v. N. O.*, 140 So. 503, 174 La. 860 (1932). A regulation which prohibits conducting a mortuary establishment in a business area except when granted upon express permission of the council is unconstitutional and violates the "equal protection" clause of the United States Constitution, in that it places within the power of the council authority to grant or withhold permits according to its whim or fancy.

after a public hearing, of which notice must be given in the municipal official journal. In case any regulation or its amendment is protested by twenty per cent of the property owners of the affected area it may not become effective until ratified by three-fifths of all the members of the local legislative body.

A zoning or planning commission, appointed by the legislative authority of the municipality, is provided for to make preliminary plans and reports to hold public hearings, and to submit a final report to the legislative body.

Each municipality must provide for a board of adjustment of five members appointed by the governing authority for five years. These boards are to hear and decide appeals from the enforcement of zoning or building provisions, to hear and decide all questions placed within its jurisdiction by municipal ordinance, and to vary or modify the application of any regulation so that the spirit of the ordinance is preserved, the public safety and welfare is secured, and justice to interested parties provided. In addition, all interested persons may appeal to the district courts for a review of the case in question.

As an additional adjunct to the power to zone and regulate buildings and land, municipalities with populations of fifty thousand or more may also establish building lines, beyond which new buildings may not go, nor old buildings be reconstructed or altered in such a way as to extend beyond such lines.[90] Building lines may be established on one or both sides of the street. In all of these cases the municipality takes an easement of way over all property abutting the lines established; and not later than twenty-five years after such establishment the municipality must provide for widening the streets affected. Damages to property owners are determined under eminent domain condemnation proceedings.

One of the rather recent attempts to extend the zoning power of municipalities further than seems reasonable, is that of Louisiana in seeking to prohibit negroes from moving into white communities and, in order to prevent charges of discrimination, white persons from moving into negro communities.

The state legislature authorized municipalities with populations of more than twenty-five thousand to withhold build-

[90] *Acts of La.*, 339 of 1926.

ing permits from persons seeking to construct negro houses in white communities or houses for white persons in negro communities except on the written consent of a majority of those belonging to the opposite race inhabiting the community or area affected.[91] In 1926 the state supreme court upheld the law, and ordinances passed under its authority, as being valid insofar as they forbade negro tenants from occupying cottages as residences in a white neighborhood.[92] The following year, however, the United States Supreme Court, in a memorandum decision, reversed the holding of the state supreme court,[93] citing *Buchanan v. Warley,* 245 U. S. 60 (1917). The latter, a Kentucky case, involved a similar ordinance based upon a statute, which had been declared valid by the courts of the state, involving the right of white men to sell property in a white community to negroes for residence purposes, but which was declared invalid under the "due process" clause of the United States Constitution.

Sanitation

The function of providing sanitary surroundings in our municipalities of today is one of increasing difficulty due to the rapid growth of cities and the concentration of large populations in small areas.

Street sweepings and trash are collected by the street cleaning departments of the larger municipalities and are either burned in local incinerators or are dumped in nearby swamps and fills.

Two methods may be employed in disposing of garbage or household trash. Many municipalities let the work on a contract basis to private firms, thus relieving the city of the administrative problem of work of this character. A few municipalities own and operate their own incinerators and take care of this problem themselves.[94]

The sewerage problem is solved in one of two ways. The municipality may compel owners of property within three hundred feet of a public sewer to connect their premises with that system, or within a reasonable time the municipality may contract for the work at the expense of the owner.[95] Secondly,

[91] *Ibid.*, 117 of 1912, as amended by *Ibid.*, 118 of 1924.
[92] *Tyler v. Harmon*, 107 So. 704, 160 La. 948 (1926).
[93] *Harmon v. Tyler*, 273 U. S. 668 (1927).
[94] Baton Rouge, for instance.
[95] *Acts of La.*, 249 of 1912. Also see *Ibid.*, 31 of 1934, authorizing municipal sewerage systems.

municipal sewerage districts may be created, each district looking after its own problem of sewerage.[96]

Sewerage districts, after the construction of the system and the retirement of its debt, may be dissolved and the ownership of the system vested in the municipality, or else it may continue in existence after the completion of the system and a tax may be levied each year for maintenance purposes.

Municipal sewerage districts are political corporations with all their rights, powers, and obligations. A board of sewerage commissioners composed of five members selected by the taxpayers of the district or by the governing body of the municipality, depending on the date of its creation, has complete charge of each sewerage district.

Safety

In providing for municipal security from fires and conflagrations the legislature has created three classes of municipalities; those with populations of less than ten thousand, those with populations between ten thousand and fifty thousand, and those with populations of more than fifty thousand.

There is little legislation for villages and towns as such outside of the general powers granted to them by special or general charter. It is presumed that they may do as they like with respect to this activity so long as they stay within their charter limits. A limit of five thousand dollars for the purchase of equipment has been set, unless exceptions have been made by special legislation.

For cities within the second class the legislature has made several stipulations.[97] Two separate forces, a day and a night force each under a captain, must be provided, the whole organization being under a fire chief. In cases of emergency the whole organization may be kept on continuous duty. Drill regulations and inspections are also provided for.

Third class cities, or those with populations of fifty thousand or more, have practically the same organization with the exception that twenty-four hours leave out of every seven days must be granted each fireman and a fifteen day vaca-

[96] See *Ibid.*, 285 of 1908, as amended by *Ibid.*, 46 of E. S. 1921, 135 of 1922, 26 of 1926, and 46 of 1928. Also see *Ibid.*, 257 of 1928, and 246 of 1916 and Chapter on Special Municipal Corporations.

[97] *Ibid.*, 61 of 1920. See also *Ibid.*, 176 of 1916. See also *Ibid.*, 22 of E. S. (2nd) 1934, establishing a State Civil Service Commission and giving it supervision and control over all municipal fire departments.

tion period with full pay each year.[98] Shreveport is the only city falling within this class.

New Orleans has always been legislated for in a separate manner and this function is no exception to the rule.[99] A two platoon system is provided for with supernumeraries or substitutes for extra service. Promotions from within the ranks are assured, and the compensation of members of the system continues while they are ill or while on their vacations. A fire chief with lieutenants and other subordinate officers direct the system under the supervision of the board of fire commissioners. No employee may be discharged for any reason until after a trial before the board, with adequate notice before the trial.

Conclusion

Perhaps the most significant contribution of this study and certainly the most important conclusion of this chapter is the fact that insofar as strictly local functions and activities are concerned the parish is equally as important as the municipality, and in many instances it dominates the field of local government.

This condition should not be altogether unanticipated, for the parish has always been the unit for all purposes of government in the state. Added to the significance of the parish in local governmental affairs is its importance as an area for state administrative purposes, and its geographical and representative position.

In an agricultural state, where smaller units of rural government other than special districts do not exist, it may be expected that the parish would play the important part in local life that it does. The parish is now, however, performing too many functions and the financial burden is entirely too heavy. A redistribution of functions is necessary. Health, charities, corrections, navigation activities, agricultural functions, and conservation work, if not taken over entirely by the state, should receive state aid with each function being performed by districts larger than parishes. Judicial districts or similar groups of parishes could well be taken as administrative areas for carrying out these activities, and the parish would still continue as the center of political and local life.

[98] *Ibid.*, 194 of 1908 and 16 of 1916. See *Ibid.*, 65 of 1924 for pension provisions.
[99] *Const. 1921*, art. 14, sec. 25, as amended 1928; *Acts of La.*, 80 of 1920, 14 of E. S. 1921, 208 of 1924.

CHAPTER XVI

Taxation and Finance

Political subdivisions of Louisiana exercise no inherent power of taxation.[1] This power is vested exclusively in the legislature, and portions of it are delegated to local government areas from time to time by the constitution or by the legislature itself. Local governments may levy and collect taxes for public purposes only,[2] and these purposes are specifically enumerated and defined in the constitution or by statute.

All taxes must be uniform in their operation upon the same class of subjects within a particular jurisdiction,[3] and no property may be assessed for more than its actual cash value.[4] The valuation and classification fixed for state purposes is the valuation and classification for local purposes unless local subdivisions of the state decide to value and assess property at less than its actual cash value for purely local purposes. If this is done the percentage fixed may not fall below twenty-five per cent of the valuation for state purposes established by the state tax commission. New Orleans has fixed the percentage upon which local taxes are levied at eighty-five per cent. All other parishes, municipalities, and subdivisions use the value established for state purposes. In levee districts, drainage districts, or in other special taxing areas including more than one parish or parts of more than one parish, taxes are assessed and collected on the percentage of the actual cash values determined by the state tax commission for such purposes. In addition to fixing these values the commission also establishes the valuation and assessment of railways, telegraph and telephone lines, and sleeping car and express companies throughout the state, for state and local purposes as well.[5]

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[1] *State v. Shreveport*, 33 La. Ann. 1179 (1881); *Sterling v. Parish*, 26 La. Ann. 59 (1874).

[2] *La. Ry. Co. v. Shaw*, 46 So. 994, 121 La. 997 (1908).

[3] *Const. 1921*, art. 10, sec. 1; *State v. Police Jury*, 106 So. 837, 160 La. 230 (1926); *Swords v. Baillio*, 29 So. 942, 105 La. 328 (1910).

[4] *Lumber Co. v. Tax Comm.*, 105 So. 89, 158 La. 990 (1925); *State v. Board*, 129 So. 724, 171 La. 110 (1930). See also *Acts of La.*, 140 of 1916, as amended by *Ibid.*, 211 of 1918, and 126 of 1934.

[5] *Acts of La.*, 140 of 1916, as amended by *Ibid.*, 211 of 1918.

Taxation and Revenues, Property Exempt From Taxation

Parishes and municipalities may exempt new industries or new additions to industries already established from local taxation for not more than five years if a majority of the qualified voters in number and in amount of property owned assent, and if competing industries already established also consent prior to the election. Various other types of property are exempted by the constitution from state and local taxation.[6] Outside of these exemptions all property, real and personal, tangible and intangible, is subject to taxation for both state and local purposes.

The Separation of Parishes and Municipalities in Taxation Matters

Whenever the charter of any city or town, that of Monroe excepted, has withdrawn the municipality in whole or in part from the jurisdiction of parochial taxation, the former is to that extent separate from and independent of the parish.[7] Neither may any parish levy any tax in excess of one-half the levy for general parish purposes on property in cities and towns having populations of one thousand or more inhabitants which provide and maintain systems of street paving.[8]

The Local Government Taxing Power

In the first place, parishes and municipalities are authorized to levy certain general taxes, such as the general parish tax, the general municipal tax, the parish-wide school tax, and others of that character.

Parochial and municipal corporations, and other public boards or commissions, may also exercise the power of taxation under authority granted them by the legislature for local purposes strictly public in their nature.[9] Under this provision

[6] *Const. 1921*, art. 10, sec. 4, as amended 1922, 1926, and 1928, for property exemptions. See *Ibid.*, art. 11, secs. 1-4 for homestead exemptions, and *Acts of La.*, 78 of 1934, a constitutional amendment, providing a two thousand dollar homestead exemption.

[7] *Ibid.*, art. 14, sec. 7. But if the taxpayers of the whole parish, including those of a separated municipality, vote a parish-wide tax, this provision does not apply. *Union Co. v. Calcasieu*, 96 So. 787, 153 La. 857 (1923).

[8] *Ibid.*, art. 14, sec. 8. Parishes are vested with the power to tax persons and property in municipalities unless that power is withdrawn by the legislature. *Sanders v. Levi*, 7 So. 692, 42 La. Ann. 406 (1890). A gravel road is not a system of street paving. *Pitre v. Police Jury*, 121 So. 767, 168 La. 269 (1929). Also see *Winnsboro v. Price*, 115 So. 908, 165 La. 702 (1928).

[9] *Ibid.*, art. 10, sec. 5; *State v. McVea*, 26 La. Ann. 151 (1874); *N. O. v. Kaufman*, 29 La. Ann. 288 (1877). The taxing power of the state should be kept separate and distinct from that of local governing areas. *State v. Parish*, 17 So. 792, 47 La. Ann. 1344 (1895).

the general local taxing power may be amplified and expanded by the legislature as it is necessary.

Two other authorizations of a rather special nature are made to local areas.[10] One allows parishes, municipalities, and special taxing areas to levy taxes for certain purposes with definite limits. The other authorizes parishes, municipalities, and special taxing areas to issue bonds for certain specified purposes and then levy and collect taxes sufficient to retire the interest and principal of the bonds as they fall due.

Thus, there are really three provisions in the constitution which may be used as bases for the local taxing power. If the first and third are not sufficient, the legislature may expand the second.

Parish, Municipal and Special District Taxes

Constitutional provisions in regard to the taxing powers of local corporations, and legislative enabling acts, may well be classified and arranged in three general groups. The first would include taxes levied by local governing authorities, largely by constitutional mandate or on their own initiative, and without any necessary vote of approval by the qualified taxpayers. These may be called basic taxes, for they are designed to support general local activities. The second group would consist of general property taxes voted by a majority in number and amount of property owned of the qualified taxpayers of the subdivision, and general property taxes levied by the governing officers of the local areas sufficient to pay the principal and interest on bond issues voted by a majority in number and amount of property owned of the qualified taxpayers of the subdivision. All other taxes would form the third group.

Basic Taxes

A parish tax of four mills is levied and collected on all taxable property in the parish for general governmental purposes.[11] Police juries may reduce the levy of four mills but they cannot increase it beyond that amount. For general educational improvement and for the maintenance of schools,

[10] See *Const. 1921*, art. 10, sec. 10, as amended, and art. 14, sec. 14, as amended. Also see *Acts of La.*, 10 of E. S. 1934, prohibiting parishes and municipalities from levying and collecting any tax, license, or excise not levied and collected by the state.

[11] *Ibid.*, art. 14, sec. 11; *Acts of La.*, 88 of E. S. 1921; *Robbins v. Parish*, Man. Unrep. Cases, 276 (1877-80).

parishes are required to levy a three mill tax each year on all taxable property in the parish unless the school board asks for less by resolution.[13] The latter is not a usual procedure, however, as a large number of the amendments to the constitution are concessions to particular parishes authorizing them to levy above the three mill limit for not more than ten years at a time.[14] Where a municipality is exempted from the parish school taxation by its charter, it must levy and collect, and pay over to the parish school board, out of the proceeds of the tax for general municipal purposes, a millage which would equal the rate levied by the police jury if the municipality were not exempted.[15]

Municipal corporations (New Orleans excepted) are authorized to levy and collect each year a seven mill tax on all taxable property within their limits for general municipal and local purposes strictly public in nature.[16] Where a municipality is exempt by law or charter from parish taxation, or maintains its own schools under legislative authority, it may levy and collect each year a tax of not more than ten mills on all taxable property within its limits.[17]

Taxes Authorized by Qualified Taxpayers

For the purpose of constructing, improving, and maintaining public buildings, roads, bridges, levees, sewerage, or drainage works, or other works of permanent public improvement, title to which is in the public, any political subdivision may levy taxes not to exceed five mills in any one year for any one of these purposes; and not to exceed twenty-five mills in any one year for all of these purposes within each subdivision.[18] These taxes must be voted by a majority in number of the qualified taxpayers and in amount of property owned by the qualified taxpayers of the area in question. Under the same conditions parishes, municipalities, and school

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[13] *Ibid.*, art. 12, sec. 15; *Acts of La.*, 88 of E. S. 1921.
[14] See *Amendments to the Constitution* for 1922, 1924, 1926 and 1928.
[15] *Const. 1921*, art. 12, sec. 15.
[16] *Acts of La.*, 102 of E. S. 1921. Also see *Const. 1921*, art. 14, sec. 12 and *Acts of La.*, 109 of 1882.
[17] *Ibid.*, and *Bracy v. Ray*, 26 La. Ann. 710 (1874). In many instances provisions of the *Constitution of 1921* are simply continuations of previous constitutional provisions.
[18] *Const. 1921*, art. 10, sec. 10, as amended 1922, 1924, 1926 and 1928. Each purpose has its own separate legislative act. See Chapter on Special Municipal Corporations and *Acts of La.*, 46 of E. S. 1921. Also see *Rock Island v. Police Jury*, 122 So. 587, 168 La. 477 (1929). *Acts of La.*, 88 of 1934, a constitutional amendment, limits these special taxes to twenty-five mills regardless of how many areas it forms a part.

districts may levy and collect an extra eight mill tax for additional support for public schools.[19]

This broad grant of authority allows local governing areas to vote taxes for various public purposes which the police jury or municipal governing body must levy annually. As shown in a preceding chapter parishes may be divided into special taxing areas for particular purposes, and thus the parish as a whole escapes the constitutional limits on its taxing power in particular sections when that power is exhausted in a parish wide sense. So long as the constitutional limits are observed in each particular subdivision, the property owners of the area qualified to vote, are supreme in their power to tax themselves, and the number of districts and the number of taxes within these districts in the past seems to have been governed only by the willingness of property owners to vote and pay special taxes.

Parishes, municipalities, and special taxing areas may also levy taxes to pay the principal and interest on bond issues voted by the qualified property owners of local corporations.[20] The police jury, the municipal governing body, or their agents, impose and collect each year a tax sufficient to pay the amounts due in each area, or sufficient for any sinking fund necessary to retire the debt at maturity.

The purposes for which parishes may float bonds includes the construction and maintenance of roads, highways, bridges, courthouses, jails, hospitals, and other public works and improvements, with all their necessary equipment. Municipal corporations may float bonds under this provision for streets, roads, alleys, bridges, waterworks, sewers, drains, artificial ice and refrigerating plants, lighting and power plants, parks, school houses, teachers' homes, and other public works and improvements together with all necessary equipment. School districts, road districts, sewerage districts, waterworks districts, irrigation districts, and gravity drainage districts may also vote bonds for their individual activities under this provision.

New districts may be created after older ones have played their part, old or new districts may be consolidated and new

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[19] *Idem.*

[20] *Ibid.*, art. 14, sec. 14, as amended 1922, 1924, and 1926; *Acts of La.*, 46 of 1921, as amended for each purpose; *Waterworks Dist. v. Hibernia Co.*, 127 So. 739, 170 La. 826 (1930); *Callaghan v. Alexandria*, 27 So. 540, 52 La. Ann. 1013 (1900); *Young v. Bossier City*, 99 So. 494, 155 La. 652 (1924); *State v. Police Jury*, 106 So. 887, 160 La. 280 (1926).

territory added. Only one constitutional limitation operates to restrain local governing areas from bonding themselves too heavily for local purposes. No bonds which, including bonds issued for all of these purposes, would cause the total bonded debt of a particular area to exceed ten per cent of the total assessed valuation of all taxable property within that area, may be issued.

Thus we find a double system of taxation for many identical purposes levied on the same property; taxes voted for improvement and maintenance, and taxes to pay the principal and interest on bond issues voted for construction and improvement activities. The system is flexible, allowing for many variations; but the flexibility is inherently complex, and property owners seldom know the total bonded debt of their own immediate communities.

Taxes of a Special Nature

A tax of one cent per gallon may be levied and collected by police juries on all gasoline or other motor fuel used or consumed within their limits.[21] If a petition by ten per cent of the qualified voters of the parish protest the tax a parish-wide election must be held to confirm the tax.

One-fifth of the severance tax collected in each parish on natural resources, or not more than two hundred thousand dollars on gas or oil, or one hundred thousand dollars on sulphur, is turned back to the parish each year, and the proceeds of a state-wide chain store tax are pro-rated among the parishes according to their populations to be used for road or school purposes only.[22]

Any one of three different forms of dog taxes may be levied and collected by parishes each year.[23] Two provide a per capita tax, the third a classified tax.

Parishes and municipalities are authorized to levy classified progressive license taxes on classes and associations of persons and corporations pursuing any business, occupation, vocation, or profession excepting clerks, ministers, teachers, laborers, nurses, or those engaged in agricultural, mechanical,

[21] *Ibid.*, art. 10, sec. 5; *Acts of La.*, 15 of E. S. 1928, and 72 of 1934; *Ray v. Parish*, 125 So. 856, 169 La. 691 (1930). This revenue may be used for road purposes only.

[22] *Acts of La.*, 140 of 1922, 301 of 1926, 5 of 1928 and 51 of 1934. Also see *Const. 1921*, art. 10, sec. 21.

[23] *Ibid.*, 148 of 1900, 198 of 1910, and 239 of 1918. See Rept. of Supervisor of Public accts., *op. cit.*, for the parishes using them.

or horticultural activities.[24] The rates of such taxes may not exceed those fixed by the state for state purposes, and, when a municipality levies the same tax rates as does the parish, municipal inhabitants pay only state and municipal occupation license taxes.[25] Municipalities also receive one-half of a fee and tax levied on all banks organized under the Federal Reserve System domiciled outside of the state but with branches in the state.[26] For fair grounds and premium awards parishes and municipalities may levy a general property tax of one mill.[27]

New Orleans has its own system of taxation.[28] General property taxes averaging from two to three per cent, and occupation license taxes based on the state rates, care for general and special expenditures, and are supplemented by fees, fines, franchises, and other minor forms of revenue.

Assessment

The state tax commission, a body of three men appointed by the governor, fixes and equalizes the value of property for the purpose of collecting state taxes, supervises all assessments made throughout the state, and directs the work of the local tax assessors.[29]

A tax assessor is elected for each parish of the state (Orleans Parish excepted) for a term of four years at each general state election.[30] All assessors are bonded, the bonds varying in amount according to the assessments and valuations of the parishes, and they must be qualified voters of the parishes from which they are elected. They may be removed by the governor for negligence, inefficiency, incompetency, malfeasance, or any other cause which he may consider sufficiently grave.[31] Vacancies in the office of one year or less are filled by appointment by the governor. Other vacancies are filled by special election. Assessors' salaries range from

[24] *Const. 1921*, art. 10, sec. 8; *Acts of La.*, 98 of 1898, 142 of 1904, and 86 of 1916.
[25] *Standard Oil v. Police Jury*, 72 So. 802, 140 La. 42 (1916); *Parish v. Avery*, 43 So. 986, 119 La. 143 (1907).
[26] *Const. 1921*, art. 10, sec. 9.
[27] *Acts of La.*, 112 of E. S. 1921.
[28] See *Ibid.*, 159 of 1912, as amended by *Ibid.*, 115 of E. S. 1921. Also see *Budget of New Orleans.*
[29] *Const. 1921*, art. 10, sec. 2; *Acts of La.*, 140 of 1916, as amended by *Ibid.*, 211 of 1918. In *State v. Landry*, 127 So. 618, 170 La. 251 (1930) the supreme court declared that the tax commission had authority to correct or change the assessment of any taxpayer. Also see *Acts of La.*, 18 of E. S. (2nd) 1934, making this authority complete.
[30] *Ibid.*, art. 14, sec. 9; *Acts of La.*, 170 of 1898, 135 of 1902, and 78 of 1906.
[31] *Acts of La.*, 170 of 1898 and 78 of 1906; *Holstein v. Guss*, 78 So. 131, 143 La. 6 (1918).

one thousand five hundred to five thousand dollars per year and are apportioned among the various agencies for whom they assess according to the amounts assessed.[32]

Tax assessors are also given allowances ranging from fifteen hundred to thirty-two thousand five hundred dollars for office expenses and for hiring clerks and helpers. Each legislative act appropriating the expenses and salaries of tax assessors also creates a Salary and Expense Fund for each parish, made up of the state appropriation and the amounts due from all other taxing areas of the parish for services rendered by the assessor.[33] Police juries may advance to their assessors each month an amount not exceeding one-twelfth of the yearly salary and allowance.

Ordinarily assessors are required to complete the listing of all property and its valuation for assessment purposes on or before April 1st. After the listing is completed notice is given in the parish journal that the lists are open for inspection by resident taxpayers. At the end of ten days the complete set of listings are presented to the board of equalization of each parish.[34]

Parish boards of equalization were created in 1920 to take over some of the duties of the overworked police juries.[35] Prior to 1920 police juries acted both as equalizing boards and as boards of review.

Parish boards of equalization consist of three members, two of them appointed by the police juries and the third member appointed by the state tax commission. They are appointed the first of the year every four years, and must be over twenty-five years of age, taxpayers, qualified voters of the parish, and are prohibited from holding any elective office under the state or under any political subdivision during their terms as members of the board or for one year thereafter. Vacancies are filled by the appointing authorities, and members may be removed by them. The compensation is five dollars per day for not more than thirty days, and traveling expenses are also allowed. Board members are paid by the parishes, municipalities, and other subdivisions according to the amount of property assessed in each.

[32] *Ibid.*, 282 of 1928, as amended by *Ibid.*, 88 of 1930 and 95 of 1932.
[33] *Idem.*
[34] *Ibid.*, 170 of 1898 and *Reports of the Louisiana State Tax Commission.*
[35] *Ibid.*, 281 of 1920.

On the first Monday in May parish boards of equalization meet and review the valuations of property as listed by the assessor. They must complete their work within thirty days. Aggregate valuations may be raised by the board, to equalize various sections of the parish or where the board feels that the property listed is worth more than it is valued for, but the board may not reduce aggregate valuations except by such an amount as is reasonably necessary to equalize values, and then only with the consent of the state tax commission.

After the work of the boards of equalization is completed, tax assessors file abstracts of the valuations of property with the state tax commission during the last week in June. The tax commission then meets, reviews the valuations of the various parishes, hears complaints, and fixes the assessed valuations of all taxable property.

The findings of the commission and the abstracts are returned to the assessors, and the corrected lists are open to public inspection for twenty days. At the end of that period the police jury sits as a board of review, hears all complaints, and certifies its recommendations to the state tax commission. The commission then gives its decision on all disputes. After the final action of the tax commission the parish assessor extends the values fixed by order of the commission on the tax rolls as the assessed valuations and the latter become permanent for each separate year.

Each assessor is furnished by the state auditor with three tax list forms, one for the office in which the mortgage records are kept, one for the tax collector, and one for the state auditor.[36] The tax lists are distributed to the property owners by the assessor or by a deputy and are filled out by voluntary declaration on oath administered by the assessor or his deputy. All real estate, whether exempt or not, must be listed with its value shown. Personal property is treated in the same manner but is carried on separate sheets attached to the tax rolls. The classification of land is provided for and lands and improvements are valued separately. Tax rolls may not be deposited with tax collectors until all taxes for the previous year have been collected or otherwise accounted for. The filing of a tax roll in the recorder's office by the assessor is notice to the taxpayer that the listing, valuation, and assess-

[36] *Ibid.*, 170 of 1898, 182 of 1896, 220 of 1910; *Vernon Co. v. Ward*, 138 So. 522, 170 La. 580 (1930); *Marston v. Elliott*, 70 So. 519, 138 La. 574 (1916).

ment proceedings have been completed, and that the taxes are due and collectible.[37] Until taxes are paid the tax roll in the recorder's office acts as a lien on the property.[38]

The assessment procedure in New Orleans is much different. Tax lists are filled out by voluntary declaration on oath by the taxpayers prior to the first day of January and are then filed with the tax assessor of the municipal district in which the property owner resides. There are seven municipal districts with one assessor elected for four years in each district.[39] In listing and valuing property the assessors act jointly as a board. Each assessor receives five thousand dollars per year and the president of the board, selected by the other members, receives six thousand dollars per year.

On the first day of February notice is given in the official journal that the rolls are complete and open for inspection.[40] Complaints are then heard by a board of equalization composed of the seven assessors and three members of the commission council of New Orleans selected by the council.[41] Following the equalizing adjustments and recommendations of the board of equalization abstracts are submitted to the state tax commission. Values are determined by the commission, the assessors again allow public inspection of the rolls, and the commission council of the city sits as a board of review to hear complaints.[42] The recommendations of the council are submitted to the tax commission and the findings of the commission are final. Values are then extended on the tax rolls and one roll is given to the state tax collector, one to the recorder of mortgages, one to the state auditor, and one is retained by the city for the collection of its taxes.

Permission is granted to all municipalities of the state to use the parish tax rolls for municipal purposes. In commission governed cities the commissioner of finance simply copies the valuations of the property of municipal residents as fixed for state and parish purposes, and the municipal taxes are levied against those values. In other cities, and in towns and villages, the clerk or treasurer follows the same procedure.

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[37] *Ibid.*, 170 of 1898.
[38] *Ibid.*, and *Succession of Sussman*, 122 So. 62, 168 La. 849 (1929).
[39] *Ibid.*, 170 of 1898, 130 of 1902, 9 of 1906, 209 of 1918, and 78 of 1926. Also see *Const. 1921*, art. 14, sec. 20. *Acts of La.*, 18 of E. S. (3rd) 1934, gives the state tax commission considerable supervisory authority over the board of seven assessors.
[40] *Ibid.*, 10 of 1920.
[41] *Ibid.*, 231 of 1920.
[42] *Ibid.*, 140 of 1916 and 211 of 1918; *Lumber Co. v. Reid*, 136 So. 282, 169 La. 905 (1930).

The Collection of Taxes

All state, parish, and special district taxes are collected by the sheriff of each parish who is ex officio tax collector.[43] Permission is given to police juries, however, to provide a special collector for local taxes if they so desire. Sheriffs must give bond as ex officio tax collectors with two sureties, for at least one thousand dollars over and above the amount of state and local taxes levied according to the last filed tax roll of the parish. Following the advice of the state auditor the governor may require any sheriff to increase the amount of this bond before issuing a commission to him.[44] Bonds must be acceptable to the district clerk and president of the police jury of the parishes concerned. If a vacancy occurs in the office of ex officio tax collector the state supervisor of public accounts takes charge until the vacancy is filled.[45]

Tax collectors are required to make returns of money collected for the state and local governments to the state auditor on separate forms each month, and the money collected must be deposited in the appropriate treasury.[46] In default of settlement with their police juries they are subject to removal from office.

Two tax collecting agencies are found in New Orleans. A state tax collector is elected for four years at a salary of six thousand dollars per year.[47] Clerical hire is provided for by the state legislature. New Orleans city taxes are collected by the commissioner of finance who is also city treasurer.[48]

Municipalities of Louisiana may have their taxes collected for them by their parish sheriffs in return for a fee based upon the amount collected. A large majority of the municipalities for this reason prefer to have their taxes collected by their own officers to avoid paying the fee. In commission governed municipalities the commissioner of finance collects taxes, and in municipalities under the mayor aldermen form of government the treasurer or city marshal acts as tax collector.

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[43] *Const. 1921*, art. 7, sec. 65; *Acts of La.*, 170 of 1898.
[44] *Acts of La.*, 26 of E. S. 1907.
[45] *Ibid.*, 251 of 1910 and 55 of E. S. 1921. Also see *R. S.*, sec. 851.
[46] *Ibid.*, 170 of 1898, 136 of 1904, 248 of 1918; *State v. Bank*, 81 So. 857, 183 La. 879. (1918).
[47] *Const. 1921*, art. 14, sec. 21, as amended 1926.
[48] *Acts of La.*, 158 of 1912, as amended by *Ibid.*, 115 of E. S. 1921.

All state and local taxes become delinquent December 31st of each year.[49] Delinquent taxpayers are notified of their status and after the first day of October following sheriffs are required to seize and sell all movable property on which taxes have not been paid.[50] On the second day of January, two years after taxes have become delinquent, following four weeks of published notice, sheriffs are authorized to sell all immovable property on which no taxes have been paid. Quarterly statements of delinquents paying taxes must be submitted to the state auditor.

Delinquent taxes were formerly subject to a ten per cent penalty per year, now five per cent, from the date of their delinquency, and may be paid at any time prior to the sale of the property concerned.

Municipalities have the same rights in selling property for taxes as do the state and parish governments, and delinquent dates and penalties are identical.[51] The city marshal or constable conducts tax sales.

The supervisor of public accounts supervises the collection of all state and parish taxes and licenses by ex officio tax collectors, and no tax collector may be discharged as such until he has satisfactorily shown that he has exhausted all legal remedies to collect taxes.[52] All commissions accruing for collecting state, parish, and other local taxes are paid into the Sheriff's Salary Fund of each parish.[53]

Other Financial Problems, Fiscal Officers

Parish treasurers are selected by the police juries for terms of two years, and may be removed for cause at any time.[54] Police jurors are not eligible for the office. Treasurers are required to furnish bond as determined by their police juries, and the juries likewise provide for their salaries. The offices of parish treasurer and tax collector cannot be held by the same person.

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[49] *Ibid.*, 170 of 1898 and 171 of 1912; *Banks v. Police Jury*, 70 So. 852, 138 La. 833 (1916). There has been, of late, considerable legislation on this subject. See *Acts of La.*, 158 and 175 of 1934.

[50] *Ibid.*, and 315 of 1910, 144 of 1918, 72 of E. S. 1921, 285 of 1928, and 194 of 1932; *Kivlen v. Horvarth*, 118 So. 140, 168 La. 901 (1927); *Recker v. Dupuy*, 108 So. 782, 161 La. 392 (1926).

[51] *Ibid.*, 93 of 1896.

[52] *Const. 1921*, art. 7, sec. 65; *Acts of La.*, 211 of 1918.

[53] *Acts of La.*, 140 of 1916, as amended by *Ibid.*, 211 of 1918. Also see the general tax bill of each session of the legislature.

[54] *R. S.*, secs. 2639, 2648, and 2651; *Acts of La.*, 121 and 177 of 1898; *Ehret v. Police Jury*, 67 So. 176, 136 La. 891 (1915).

The parish treasurer receives and keeps records of parish funds and deposits them with the fiscal agent or agents.[55] He takes and files receipts for all disbursements; keeps accounts of all receipts and expenditures, and of all debts due to or from the parish; and directs prosecutions ordered by the police jury for the recovery of debts that are or may be due the parish. He is required to make a detailed and complete financial report to the police jury at every regular meeting, and at other times as he is directed. The parish treasurer likewise submits a complete report to the clerk of the district court every six months.

No money may be paid out of the parish treasury unless it has been previously allowed by the police jury, or by a court or officer authorized to issue orders of this character. Any person having a claim which has been allowed against the parish must present his claim to the treasurer within sixty days after its allowance. All claims are recorded by the treasurer with the dates of presentation, and they must bear his endorsement and the date on the back. Parish treasurers are not allowed credit for vouchers which they present for settlement until they swear or affirm that they have paid the full amount or that they have received the vouchers in payment of parish dues, and that they have neither directly nor indirectly speculated in them.

The parish treasurer must make returns to the secretary of state concerning the collection of motor vehicular licenses, and he has special reports to make to the state auditor and to the supervisor of public accounts as to the compensation and expenses of sheriffs and tax collectors.[56]

In a number of the parishes the secretary of the police jury also acts as parish auditor, and examines and certifies to the reports of the parish treasurer.[57]

The custody and disbursement of municipal funds in New Orleans and in other commission governed cities is under the direction of the commissioners of finance.[58] The city treasurer in municipalities under the mayor aldermen form of government is appointed by and responsible to the councils.[59] Municipal fiscal officers are subject to practically the same limita-

[55] *Ibid.*, secs. 2641-47; *Parish v. Schexnaydre*, 34 La. Ann. 850 (1882).
[56] *Acts of La.*, 241 and 277 of 1918.
[57] See *Minute Books* of police juries.
[58] *Acts of La.*, 159 of 1912, as amended by *Ibid.*, 214 of 1934. Also see *Ibid.*, 207 of 1912, as subsequently amended.
[59] *Ibid.*, 136 of 1898, as subsequently amended.

tions and perform their duties in much the same way as parish treasurers. They do not, however, have anything to do with state funds nor are they under the supervision of the supervisor of public accounts.

Fiscal Agents

The recent critical condition of both banks and public credit in Louisiana prompted the state legislature to adopt a new law in 1932 with respect to local governing depositories. The law contains some rather curious innovations and has not yet been tested as far as the writer knows, with respect to its legality before the state or federal courts.

Police juries and the governing authorities of municipalities may select local depositories from national or state banks offering to qualify in a fixed ratio that the capital and declared surpluses of each bank bear to the total capital and declared surpluses of all banks in the particular area.[60] At least two per cent interest on the average daily balance must be paid, and banks offering to qualify must guarantee to lend up to seventy-five per cent of the average deposit for three months immediately preceding the loan at an interest rate of not more than six per cent. Where bids are asked for and banks do not qualify the local authorities may enter into written agreements with any banks, the latter to be specified as depositories.

Depositories or fiscal agents must post as security for funds on deposit with them, United States, territorial, or Louisiana bonds, certificates of indebtedness, or promissory notes of their subdivisions in an amount equal to the average daily balance for the preceding twelve months of the deposit of the local area. If the bank or banks prefer, they may furnish an indemnity bond.

Fiscal contracts may be cancelled without notice in cases of emergency justifying that action, and when cancelled the unexpired term may be filled in the same manner as was the original contract.

Local governing officers are prohibited from taking any part in the selection of fiscal agents or depositories in which they are officers of the banks under discussion.[61] Any bank

[60] *Ibid.*, 45 of 1932. Also see *Ibid.*, 89 of 1934.
[61] *Ibid.*, 205 of 1912, 8 and 265 of 1916, and 64 and 68 of 1926.

which has contributed directly or indirectly to the election for any candidate to a police jury or city council, or whose officers have contributed, are ineligible as fiscal agents or depositories.

Fiscal Control

Before any police jury or municipal council may decide on the amount of taxes to be assessed for the current year, they must formulate an estimate or budget of the various items of expenditure and publish it in their official journals. This must be done at least thirty days before the governing body meets and fixes the amount of taxes to be assessed.[62]

> "A budget or estimate of expenditure should name the year for which it is intended. It should be prepared with care and with reasonable attention given to details; should be inserted in the minutes; and should be formally adopted. Advertisements of the budget should also name the year and indicate that it has been adopted."[63]

In actual practice the following method is used for preparing budgets of expenditures.[64] Each year the tax assessor submits, sometime between June 30th and August 1st, the total valuations of property to the police jury and city council. The treasurer, secretary, and chairman of the finance committee of each subdivision then formulate the budget. After passage by the finance committee it is submitted to the police jury or city council, as the case may be, and ratified by that body as a whole program. In case changes are necessary in the budget, they may be made, but the budget must be republished in its new form.[65]

Certain restrictions and limits operate on the financial powers of police juries and municipal authorities. For the most part they concern appropriations and debts.

The vote of a majority of all members of a governing body is required to make an appropriation, and no appropriations or expenditures may be made which separately or together may exceed the estimated revenues for the year.[66]

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[62] *R. S.*, sec. 2745; *Acts of La.*, 186 of 1898; 207 of 1912, and 24 of 1926; and 159 of 1912, as amended.
[63] *Police Jury v. Bouanchaud*, 51 La. Ann. 860 (1899).
[64] From interviews with Parish Treasurers and Commissioners of Finance.
[65] See police jury *Minute Books* and *Council Records*. See also Appendix E.
[66] *R. S.*, sec. 2744; *Acts of La.*, 80 of E. S. 1877 and 82 of 1902.

The annual revenues of each local government area must be dedicated as follows:[67]

(1) All statutory charges must be paid from the funds upon which they are imposed.

(2) All charges for services rendered annually upon time contracts are then disposed of.

(3) All necessary charges provided for by ordinance or resolution fall into the third class.

(4) After the above charges are accounted for, local government authorities may then enter into agreements and contracts in which they may dedicate in all or in part the excess of annual revenues of subsequent years, providing there is such an excess above estimated statutory, time, and usual charges. Agreements or contracts of this nature may not run for more than twenty years.

Local government authorities may not contract any debt or liability without fully providing, in the ordinance creating the debt or liability, the method of paying the principal and interest, and the ordinance itself must remain in force until the obligation is retired.[68] In case the payment of a debt is provided by levying a tax for that purpose, and the tax is not collected, the district judge is required to issue a mandate to the sheriff or tax collector to collect the tax after the attorney of any creditor has obtained a judgment in his client's favor.[69]

All purchases of materials and supplies, and all public works, costing more than five hundred dollars or over, must be advertised for bids.[70] Contracts are to be let to the lowest responsible bidder, providing he can furnish bond for the performance of the contract for at least one-half of the amount involved. A certified check for five per cent of the amount may be requested as evidence of the good faith of the bidder. No contracts may be let on a cost plus basis. Any governing officer who is directly or indirectly interested in a contract must abstain from voting on the contract.[71]

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[67] *Ibid.*, and *Acts of La.*, 126 of 1910; *State v. N. O.*, 181 So. 848, 171 La. 670 (1930); *Williams v. Police Jury*, 68 So. 946, 137 La. 536 (1915).

[68] *Ibid.*, secs. 2446-49; *Citizen's Bank v. Jennings*, 82 So. 66, 107 La. 547 (1902); *Durham v. Slidell*, 72 So. 465, 139 La. 988 (1916).

[69] *Ibid.*, sec. 2450.

[70] *Acts of La.*, 73 of 1926 and 190 of 1928; *Standard Co. v. Police Jury*, 108 So. 819, 158 La. 294 (1925).

[71] *Ibid.*, 200 of 1906.

Parishes are required to publish the proceedings of their police juries and the financial statements required of them by the supervisor of public accounts in their parish journals.

At least twice each year the accounts of all police juries, road districts, irrigation districts, drainage districts, levee districts, navigation districts, school districts, and waterworks districts are examined under the direction of the supervisor of public accounts.[72] Examinations by the same authority are also made semi-annually of the salary funds of assessors and sheriffs, and annual examinations are made of the accounts of all state tax collectors. The supervisor of public accounts must also examine and audit the accounts of municipalities when directed to do so by the governor.

Municipalities under the mayor aldermen form of government must publish an annual financial statement on the first day of October, showing receipts and expenditures in detail.[73] Commission governed municipalities must publish quarterly financial statements, and a summary of those statements each year.[74] Commission councils must also have monthly audits made of the municipal books by a competent accountant approved and sworn by the district judge.

For the purpose of furnishing information to the legislature concerning the condition of state and local revenues, the state auditor each year prepares a tabular statement showing separately the whole amount of money received into the state treasury from all sources, and the amount received from each parish and from each source of revenue from each parish.[75] He also has the sole superintendence and direction, under the laws of the National Government, of the school lands of the state.

Bonded and Other Debts

In addition to bonds which may be issued by local governing authorities for certain specific purposes,[76] bonds, certificates of indebtedness, and tax warrants may be issued for almost every other purpose, and local governing authorities may also borrow sums of money simply on the credit of the local area. This unwise local freedom has resulted in the

[72] *Ibid.*, 25 of 1910, 77 of 1912, 198 of 1914, and 109 of 1918.
[73] *Acts of La.*, 136 of 1898, as amended.
[74] *Ibid.*, 207 of 1912, as amended by *Ibid.*, 208 of 1914.
[75] *R. S.*, secs. 175-176.
[76] See the Section on Taxation in this Chapter, and the Chapter on Special Municipal Corporations. Also see *Acts of La.*, 222 of 1934, authorising political subdivisions of the state to borrow from the national government.

financial collapse of several local governing areas.[77] Legislation on this subject covers the entire field so completely and minutely that a general discussion only will be attempted.

Local governing authorities may anticipate general revenues, issue certificates of indebtedness at not more than eight per cent interest, and provide for their payment a year later in order to defray current expenses.[78]

In order to retire previously created debts local governing authorities may dedicate and pledge not more than two mills of the general tax and issue certificates of indebtedness to run not more than twenty-five years and to bear interest at not more than six per cent per year.[79]

Parishes and municipalities may also issue bonds against the avails or residue of the general tax for roads, highways, and public buildings.[80] Municipalities may also issue bonds under this provision for a number of other purposes.

In 1926, prior to the adoption of the present state highway plan, the building and improvement of roads was not progressing as rapidly as had been anticipated, so the legislature authorized local subdivisions to fund their five mill special taxes for road and bridge work and issue negotiable certificates of indebtedness for not more than five years at a time.[81]

By 1928 many bonds issued under the Constitution of 1898 were beginning to mature and the special taxes voted for their retirement evidently were not being promptly paid, for the state legislature authorized parishes and municipalities to anticipate the payment of special taxes voted for bond purposes prior to 1921 and to issue refunding bonds.[82] Thus it seems that bonds issued in the past will be retired with more bonds issued in the future, and at the same time new bonds and certificates of indebtedness are being issued pledging current revenues far into the future.

In 1926 the tangled condition of local debts and obligations, especially in parishes, was becoming so apparent that

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[77] In Livingston Parish, for instance, teachers in the 1930-31 school session were paid in tax anticipation warrants maturing in 1933. Also see Chapter on Education. For an extremely able presentation of this situation see *Reports of the Louisiana Tax Reform Commission*, 1933.

[78] *Acts of La.*, 79 of 1916, 84 of E. S. 1921, and 52 of 1924.

[79] *Ibid.*, 87 of 1928, 18 of E. S. 1928, and 180 of 1932; *School Board v. Bank*, 123 So. 802, 168 La. 1118 (1929).

[80] *Ibid.*, 140 of 1922; *Montgomery v. Lafayette*, 98 So. 259, 154 La. 822 (1923).

[81] *Ibid.*, 140 of 1926.

[82] *Ibid.*, 256 of 1910 was superseded by *Ibid.*, 46 of 1921. Municipalities were authorized to refund by *Ibid.*, 8 of E. S. 1930, and parishes received their authority from *Ibid.*, 85 of 1928.

provision was made for parish-wide assumption of particular forms of local debts.[83] By 1932 parishes were authorized to assume the debts of any road, school, levee, drainage, irrigation, or levee district wholly within the parish when such action is approved by a majority in number and amount of property owned of the qualified property owners in an election for that purpose.[84] The tragedy of the present situation is that under the constitution the legislature is unable to force parishes to assume these debts, and it is very unlikely that residents of more fortunate sections of parishes will consent to assume obligations of less fortunate areas.

The debt situation in New Orleans, while probably as acute as in other sections of the state and of the country, is not entirely beyond control. The floating debt of the city is administered by the city board of liquidation and is legislated for by special acts of the legislature. Other forms of debts and obligations are under the control of the city council. Insofar as these are concerned the city council apparently has a free hand in providing for their payment, since the general tax of the city is raised or lowered by the council as conditions warrant, there seeming to be no constitutional or statutory limitations on the city general property tax other than what its tax payers will consent to pay.

In 1931 New Orleans had a total assessed value of all taxable property of $610,093,510.[85] This was approximately $16,000,000 less than the valuation of 1929. Yet by January 1, 1933, New Orleans had a total bonded debt of approximately $62,790,000, or more than ten per cent of the assessed value of all taxable property in the city.[86] It is no exaggeration to conclude that the same condition prevails in other parishes of the state due to the depreciation of property values.[87]

From 1925 to 1933 twenty-three parishes suffered a decline in each two year period in their total assessed valuations of taxable property.[88] In 1933 fifty-seven parishes had lower total assessed valuations of taxable property than in 1925, and only seven parishes had higher total valuations than they had in 1925. There were no parishes showing an increase every two years of total taxable wealth during the same pe-

[83] See *Const. 1921*, art. 14, sec. 14, par. k, as amended 1926.
[84] *Ibid.*, as amended 1932; *Acts of La.*, 164 of 1932.
[85] See Appendix D.
[86] *National Municipal Review*, June, 1933, pp. 275-88.
[87] See Appendix D.
[88] *Idem.*

riod. With valuations fluctuating as they do and with different conditions prevailing in all parishes, a set standard debt limit seems out of place.

Lower property values and incomes, with the resulting inability to pay taxes, have given state and local credit in Louisiana a severe blow. On May 5, 1933, according to The Bond Buyer of New York, the State of Louisiana had defaulted on one bond issue; eight parishes, three school districts, ten reclamation, levee, irrigation, and drainage districts, and two special assessments had defaulted or had been defaulted.[89]

Conclusion

No discussion of local taxation and debt problems in Louisiana is complete without also considering the state, for state and local sources of revenue are practically identical, the general property tax being the chief source of the latter and an important source of the former.

In 1928 the general property tax formed 42.5 per cent of all state revenues. In 1929 it still formed 38.3 per cent of all state revenues.[90] In 1928 the general property tax constituted 94.5 per cent of all local revenues, in 1929 it constituted 94.6 per cent, but dropped to 94.5 per cent of all local revenues in 1930.[91] In other words, local governments are almost entirely dependent on general property taxes while the state is not; yet the latter prefers to remain in the same field.

An examination of the tax rolls of Louisiana and of the Reports of the State Tax Commission reveal that the taxable wealth of the state is made up almost entirely of land, city lots, improvements, banks, merchandise, automobiles, manufacturing establishments, and public utilities.[92] Other forms of wealth exist and yet they are not taxed. In a number of instances the tax commission has severely criticised the general property tax, as did also the assessment and taxation commission in its report to the Constitutional Convention of 1921. Both commissions have recommended the adoption of an income tax. This suggestion became a reality in 1934 when a

[89] National Municipal Review, *op. cit.*, p. 271. Also see *Reports of Louisiana Tax Reform Commission—1933*, for further pertinent information as to debt conditions and local defaults.

[90] National Industrial Conference Board, *Cost of Government in the United States, 1929-1930*, p. 108. This decrease is accounted for by an increased gasoline tax.

[91] *Ibid.*, p. 115.

[92] *Annual Report of the State Tax Commission*, 1926, pp. 4-5.

constitutional amendment providing an adequate income tax was adopted.[93] In urging further consideration of an income tax the tax commission called attention to an announcement by the United States Department of Commerce on February 1, 1924.[94] On that day it was reported that the principal forms of wealth of Louisiana on December 31, 1922, amounted to approximately $3,416,860,000 as compared with a total assessed valuation of taxable property for the same year of $1,561,580,784. Only 45.7 per cent of the total taxable wealth of the state was being taxed.

If the state should use the income tax for its own purposes and not so much for local tax relief, and make a suitable exemption for state general property taxes, general property could bear the local tax burden with additional state aid and no one class would be taxed at the expense of other classes.[95] The state should not, however, leave entirely the general property tax field, for a certain amount of state supervision of the assessment and taxation procedure is necessary.

Prior to 1907 tax assessors were appointed by the governor and were not constitutional officers. Since then their popular election has been provided for in the constitution.[96] In all fairness it must be admitted that the general increase in property valuations since a state tax commission was first provided has been due very largely to the supervisory powers and activities of the tax commission rather than to popular control over tax assessors.[97] Tax assessors appointed by the commission or by the governor would lend strength to the taxing systems of both state and local areas, and would ensure taxation of more wealth than is now being found in local areas.

The solution of local taxation and debt difficulties is not as simple as might be expected, for the problem is further complicated by constitutional difficulties and a rather jealous and watchful sentiment for local autonomy on the part of local citizens.

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[93] *Const. 1921*, art. 10, sec. 1. See also *Acts of La.*, 21 of 1934.

[94] Annual Report, *op. cit.*, p. 5. Also see *Wealth, Public Debt, and Taxation*: 1922, Department of Commerce, p. 25.

[95] *Acts of La.*, 54 of 1934, sets up a Property Tax Relief Fund. The Fund provides for an exemption of from one thousand to two thousand dollars of all homesteads from state and local property taxes, the exempted amount to be paid out of the Fund to the state and local areas effected.

[96] See *Const. 1921*, art. 14, secs. 9 and 20; *Report of the Taxation and Assessment Commission*, 1921, pp. 19-25.

[97] See Annual Report, 1931, *op. cit.*, p. 41.

A constitutional convention would be necessary to put into effect the following plan, but its merits have been tested in at least one other state and to date the plan has seemed to be successful.[98]

Both the state and local areas of Louisiana have been living in the future for the last ten years or so. For a while they must live in the present. A local government commission should be created with supervisory powers over all local bond issues; parish, municipal, and special district. No new bond issues should be floated unless the commission passes upon them as being appropriate, and has ascertained that the financial condition of the area is such that it can support the added burden. The supervisor of public accounts should act as the chairman and executive agent of the commission.

All road districts should be abolished and the remaining local roads organized according to parish units. School districts should exist for the sole purposes of maintaining plant and equipment. Parish and state revenues should operate the schools. Drainage districts should, wherever possible, be consolidated by parishes. These suggestions would, if adopted, do much to alleviate misgivings as to the future.

To prevent further defaults on local bonds, certificates of indebtedness, and tax warrants, the state should take them over, guarantee their payment, and supervise their interest and principal payments until they are retired. The added financial burdens of the state resulting from the adoption of this plan and by a redistribution of functions could be offset by using the income tax and by a general reorganization of all state governmental agencies.

Constitutional limitations on local taxes and debts have not operated to deprive local areas of the privilege of committing financial suicide. On the contrary they have been twisted, amended, and reinterpreted to the extent that they in no way resemble what they originally were. In addition to being faulty as far as limiting debts and taxes are concerned, they are not flexible, and areas with constantly increasing populations, industries, and wealth are restrained from a natural expansion should the provisions be literally enforced,

[98] See White, L. D., *Trends in Public Administration*, p. 71, and Wager, P. G., "State Centralization in North Carolina," *American Political Science Review*, November, 1931, pp. 996-1003. Also see *Reports of the Louisiana Tax Reform Commission*, 1938. The Commission recommends the creation of an ex-officio board to supervise special local taxes and bond issues. The writer prefers a more permanent organization.

while other areas are able to enjoy, comparatively speaking, many of the advantages denied to the former group. These limitations should be abolished and full discretion and power granted to the local government commission suggested above.

An examination of local budget-making procedure and of local budgets themselves reveals the fact that the primary aim of local government authorities in the past has been not to pare down expenditures, but to spend all the revenue that accrues. As an instance of this practice, all budgets are based upon estimated fixed revenues and no plans for the next fiscal year are made until the local authorities are reasonably sure of what to expect. It is very doubtful if any governing body has willingly and on its own initiative adopted a lower general tax rate than the maximum allowed by law.[99] Following a petition of protest by twenty-five local taxpayers, no local budget should be allowed to go into effect until the state supervisor of public accounts has examined the estimates and is satisfied that they are necessary.[100] If he refuses to pass upon the estimates the budget should be changed to meet with his approval after publication of the facts in the local official journal.

Sound taxation and financial programs are the foundations of local governments. Without them their activities and services are in serious danger of being curtailed, if not altogether discontinued.

CHAPTER XVII

Conclusion

The organization of local administrative areas is too often based upon population, area, or both, instead of upon functions and services to the people in relation to these criteria. This basis is both antiquated and fallacious. As a result, both functions and services are handicapped by the heavy costs of overlapping features, by the duplication of administrative agencies, and by inadequate financial resources.

No community or local area is entirely self-sufficient or completely isolated from other communities. Functions once

[99] See *Reports of the Supervisor of Public Accounts*, 1930-1930. The maximum tax rate has been levied by police juries and school boards without exception.

[100] Kilpatrick, W., *State Administrative Review of Local Budget Making.*

assumed to be purely local in character are now of state-wide significance. Local areas are no longer capable of performing them even though they may still be willing to do so. Highways and roads, education, welfare, law enforcement, health, corrections, vocational aid and encouragement, the conservation of natural and other resources, large scale public works projects—these are now of particular importance to the state. As soon, therefore, as the state undertakes to perform these functions, at that time and not until then will they be supported and administered in an adequate fashion. Until then there must be a stage of transition during which these functions should be performed by areas better qualified than those now in existence. To date the parish has been entrusted with this responsibility.

With some exceptions, the parish is still a qualified area for such administrative activities. Municipalities and special taxing districts are not qualified to act in this capacity by virtue of their size and peculiar local conditions. In a number of instances consolidations of existing parishes based on area, population, taxable wealth, and other important criteria, should be made to provide more adequate areas. Even larger districts made up of groups of parishes might perform functions such as providing for health, sanitation, welfare, and corrections. This procedure has already been followed with respect to levee districts and judicial districts. In one instance, that of New Orleans, a parish and a city eventually became one area with the same boundaries through natural growth and a process of integration.

The judicial system of Louisiana may ultimately become one of the most unified of all state judicial systems. Authority for this integration and unification is provided for in the constitution. It remains only for the supreme court to exercise the power granted.

With the exception of district judges, whose terms in office should be increased to ten years, judicial tenure is adequate, and the custom seems to have been established of reelecting judges who have demonstrated their ability and learning in terms long enough to permit an intelligent selection by the public. Popular judicial selection is not, however, to be desired. The appointment of judges by the governor, with senatorial confirmation, or by an elected supreme court,

would provide superior judicial talent on the bench. If such a mode of appointment were adopted, judges could then run against their records, as now seems to be the practice. Provision is made for the retirement of judges after a reasonable period of service, and the salary and pension schedules are adequate.

Special courts such as municipal, juvenile, and the recorders' courts of New Orleans are provided. The creation of specialized courts is an important development and should be continued, but without departing from the present unified system. The justice of the peace is no longer found in strictly urban areas, and is fast disappearing in areas where the populations warrant the establishment of municipal courts. A reduction in the minimum population required by the constitution for the establishment of municipal courts would hasten the abolition of justices of the peace.

Since the supreme court is granted considerable unifying authority, it should also be authorized to provide for the procedural civil and criminal rules which are now laid down by statutes or by codes. At the same time, the final civil jurisdictions of district courts and of courts of appeal, and the final criminal jurisdiction of district courts, should be extended so as to relieve the supreme court of a portion of its large appellate burden.

All court officers, including clerks and other officials, should be appointed by the courts. Political affiliation or support is not a proper qualification for those offices. In New Orleans, appointed court officials might also include the civil and criminal sheriffs, since neither is in any real sense a law enforcing or peace officer.

The supervisory authority of the attorney general over district attorneys is a broad, general, constitutional grant. It has not been exercised to any large degree in the past, possibly because both the attorney general and district attorneys are popularly elected. The governor should appoint the attorney general, and the latter should be vested with the power to appoint district attorneys, thus correlating and unifying the prosecuting machinery of the state.

A state police force should be provided for the enforcement of state law. Law enforcement is properly a state function, and entrusting this duty to local officers has resulted

in varying degrees of strictness or laxity depending more or less on local opinion. The state highway police would provide an excellent basis for such a force if made a non-political body, and if granted supervisory authority over local law enforcing agencies for state purposes.

Sheriffs should continue only as local law enforcing and court officers. Their appointment by the district judges or by the governor would ensure qualified office holders. Should they be continued on an elective basis, the governor should be authorized to remove them for cause after a public hearing. Under no circumstances should the sheriff continue to act as tax collector, state or local. This financial duty has operated in many instances to make the sheriff a clerical officer, with the result that his other duties have often been neglected.

Municipal police organizations have always been interested primarily in the enforcement of local ordinances and regulations. They have not been, on the whole, very effective as state agents. This deficiency would be remedied by the establishment of a state police with supervisory powers for state purposes.

Constables and coroners are no longer necessary. The former could be abolished and their duties entrusted to sheriffs or deputy sheriffs with an improvement in the performance of such duties. The functions of the coroner are of such a nature that the parish physician or parish health officer, salaried officials, could easily perform them.

The fee system for the issuance and service of writs and orders, sales, and other services performed by the courts or their officers should be revised and fees of small amounts deleted, leaving only those to be received for important services. The fees collected should then revert to the state or to the parish to be used for salaries and expenses.

The problem of education in Louisiana is largely a question of where the function should be located. Until the state realizes its duty in this field, it should guarantee, with the parish, an adequate school term, and these two areas should supply the funds necessary for operating the schools during the school year. Individual communities could then be held responsible for providing educational plants and equipment. Subsequently, the number of school districts should be re-

duced to not more than five in each parish, with the latter as the main unit of educational administration.

As an aid in making education a function of the state, and to unify further and correlate the whole educational system, the parish school board should nominate from an accredited list of candidates and the state superintendent should appoint from those nominations all parish superintendents of education. The authority to remove parish superintendents with the consent of the state board of education should also be vested in the state superintendent.

The function of highways and roads is also a state function, to be administered and supported by that area. Plans have been made, and are fast nearing completion, for a primary and secondary state highway system as the basis for all further road work in the state. All minor roads and streets, parish or municipal, should be laid out and correlated with this future system in mind. The parish should then be made the unit for all road work in rural areas, so that road districts would no longer be necessary.

Adequate advisory and supervisory powers should be vested in the highway commission in connection with these proposed changes, so that local road systems may be planned with a view toward their incorporation in the state system at the earliest opportunity.

The state has taken the parish as the unit for election purposes, and has provided rather elaborate and fairly adequate machinery for both primary and general elections. The costs of both state and local elections are borne mainly by the state when they are held at the same time. A defect is found in primaries, however. Aside from the basic expenses, which are shared by the state and parishes or municipalities, all other expenses are assessed against the candidates. The state, through its legislation and the decisions of its courts, has repeatedly declared that primary elections are a part of its general election system. If this be true, the state should support primaries and general elections alike. Candidates for nomination should still be required to make fairly substantial deposits as guarantees of their good faith in seeking nomination, and to discourage the indiscriminate filing of applications to have names listed on primary or general election ballots.

The tax plan of the state is antiquated and in need of reorganization. The classification of taxable wealth within various taxing areas is already provided. A partially segregated taxation system is necessary, however, to aid local areas in solving their financial problems. The state should adopt the income tax as its chief source of revenue, lower the state general property tax to a point by means of which the state remains in the general tax field merely enough to supervise and regulate the valuation and assessment process, and provide a sufficient exemption for state general property taxes. The income tax, the small general property tax, and other special taxes such as the severance tax, business license taxes, inheritance taxes, and public utilities taxes, would then constitute sufficient revenues for the new responsibilities and obligations the state would be expected to assume. Property exempted from state and local taxation should be limited to public property and government obligations, the property of religious and charitable institutions used as such, and burial grounds not managed for profit or income. All other forms of property should bear an equal tax burden.

Tax assessors are now subject to review and supervision by the state tax commission, and, since it is proposed that the state leave the general property tax field as far as possible, it is suggested that police juries appoint assessors from a list of qualified local candidates submitted by the tax commission. Forms and methods, maps and other charts, should be a mandatory requirement for all valuations and assessments, and would do much to bring about the equalization of taxes. The state tax collecting duties of sheriffs might well be delegated to the tax assessors, and thus the same officer would perform both financial duties. To encourage the prompt payment of taxes a small discount should be offered, and tax delinquent penalties should be graduated and not uniform.

Police juries should no longer act as local boards of review since their opinion as to values is probably no more correct than that of the average uninformed laymen. Parish boards of equalization should act not only in an equalizing capacity, but also as boards of review.

The same problem that is found in establishing administrative units for state purposes also exists with respect to the

creation of areas for purposes of local government. Area and population do not always ensure proper boundaries for local governments. The problem is still mainly one of function and of adequacy, and units should be established only on that basis. The municipality is qualified to act as a unit for what might be termed "selfish purposes", such as the provision of light and power, heat, water, sewerage, and other similar necessities. In many instances a parish and the municipalities within its borders would be still more suitable for the administration of these local functions. The organization of special taxing areas smaller than parishes for drainage and irrigation purposes should be discouraged, and the parish, or even larger areas consisting of more than one parish, should be encouraged for these purposes. Sewerage and waterworks districts in rural areas should be permitted only where they are reasonably necessary and when the locality is able to bear the added financal burden.

Aside from municipalities, parishes or consolidations of parishes are the proper areas for the largest possible measure of local government. In fact, an examination of contemporary parochial authority in the field of local government results in the conclusion that parishes are rural municipalities in practically every sense. For this reason parish boundaries should be so established that the areas resulting would be of a more natural character, and not artificial or arbitrary. Thus parish consolidation is in order, and in two instances, that of Caddo Parish and Shreveport, and that of East Baton Rouge Parish and Baton Rouge, parish-city consolidations may be expected in a few years.

Constitutional home rule for municipalities and parishes is not necessary in Louisiana. An examination of grants of authority to parishes and municipalities reveals the fact that they exercise a very large degree of local freedom and that their powers are numerous and extensive. In many instances grants of authority to parishes equal those made to municipalities, and in other cases the difference is of degree rather than of character. Three optional forms of government are provided for municipalities, and municipal freedom in changing charters is rather extensive. The forms of parish government are provided in too much detail, however, and mor

authority should be granted parishes to make individual changes as local conditions warrant.

The police jury does not have the proper representative basis for each member to act in a parish-wide capacity. Its members are elected by wards, but the number of wards and the number of jurors from each ward are based upon population. A more representative body from the point of view of the parish as a whole, based upon popular support rather than upon sectional support, is necessary. Police juries should, therefore, consist of from five to seven members elected from the parish at large. In this way only may urban-rural jealousies and antagonisms be reconciled.

Police juries are also too large and too unwieldy to act as administrative authorities over the wide field of governmental activity that is theirs. A jury composed of from five to seven members would still not be competent to act in an administrative capacity. Government is not the simple organization that it appears to be. The demands of a public administrative office are technical, and the office requires a highly trained occupant. Police juries, on the other hand, consist of laymen, and rightly so, for they should act only in a representative and supervisory capacity. A clear separation of policy-determining activities from those of an administrative character is necessary.

Since parish government is largely administrative, a trained executive director of parish activities is necessary, preferably one with technical and executive training in engineering. The parish manager should be appointed by the police jury, and should be responsible to that body. His salary would be provided by the appointing authority. The entire local governing system of the parish should then be reorganized on the departmental plan, with departments of finance, health, public works, welfare, and public property and purchases. Each department should be under an official appointed by and responsible to the manager, the whole constituting an administrative hierarchy from the bottom to the top. These departments, however, should be subject to change according to local conditions.

At present neither the state nor any local government has a civil service system worthy of the name. An adequate civil service system is necessary for selecting the trained, perma-

nent, non-political personnel that should have charge of the operation of our governmental institutions. For the most part, the burden of maintaining a proper examining system for employing public workers would be too great for many local areas to bear. Neither would they be competent to conduct examinations of the type that should be required. It is suggested that the state provide immediately for a civil service system for all subordinate state positions, and that provision be made for advising and assisting in the selection of trained personnel for local units. Advantages to the state as well as to local areas would accrue from this service.

With the exception of those of New Orleans, until recently municipal problems have been of a simple character, and were solved by the governmental officers of the forms of government provided. But the new scope of municipal activity, particularly in the field of developmental functions, has created conditions under which a trained and qualified municipal personnel is necessary. The commission manager plan provided for cities with populations of five thousand or more would aid in simplifying the tasks of modern municipal government. This plan is strongly urged as the best possible form of municipal government for cities of ten thousand inhabitants or more. In order to complete the divorce between local government and political affiliation, municipalities should also avail themselves of the suggested services of the state in selecting competent employees according to the civil service rules and regulations.

The purposes and amounts of local taxation are generous, to say the least. General taxes for ordinary governmental expenditures are sufficient. In the field of special taxation, however, a serious condition exists. Even with constitutional limitations restricting the total taxes for each purpose in each area and requiring the affirmative consent of a majority in number of taxpayers and value of property owned, the tax burden has been increased beyond the present capacity to pay. In addition, permission to issue bonds and levy additional taxes for their retirement has been granted for practically the same purposes.

Parishes and municipalities should not be permitted to vote special taxes unless the purposes are reasonably necessary and the areas are competent to bear the extra tax burden.

Neither should bonds be issued and special taxes levied unless the same conditions are fulfilled.

Constitutional tax and bond limitations have not proved satisfactory. They have been amended, distorted, and evaded to the point where they are today practically meaningless. Constitutional, statutory, and judicial supervision of local finances have failed. Administrative regulation based upon discretionary authority appears to be the only solution to the problem.

A local government commission whose members are appointed by the governor and confirmed by the senate should supervise and control all local bond issues and debts. The state supervisor of public accounts should act as chairman and as executive agent of the commission. No bonds should be issued and no debts should be incurred without the consent of this commission. All present bonds and all tax warrants and certificates of indebtedness should be provided for and retired under its supervision and control.

Local budgets and taxes should be subject to examination by the supervisor of public accounts. If a petition by twenty-five resident taxpayers requests an examination of a local budget, parish or municipal, the budget should not become effective until it is examined and approved by the supervisor's office. If the supervisor of public accounts should refuse to approve the budget, the necessary changes should be made in its provisions and the facts of the case published in the local official journal before the budget becomes effective.

Examinations of parish and special district financial systems are made by the office of the supervisor of public accounts at least once each year. These examinations are of only the most perfunctory character. They should, on the contrary, be searching and critical audits. The supervisor is also authorized to examine the accounts of any municipality when ordered to do so by the governor. As a regular procedure municipalities must publish annual financial statements, and are sometimes required to have audits made of their accounts by outside examiners at regular intervals, but the latter are not always as critical of local financial methods as they should be. Rural local areas are now required to use a uniform accounting system. The same requirement should be extended to all municipalities.

Both local and state taxes might well be collected by the state tax collector on the payment of a small charge by each local area, though should parishes and municipalities find that their own financial officers can collect local taxes for less than the charges assessed by the state collector, such action should be permitted.

The chief contemporary problems of New Orleans are form of government and metropolitanism.

The present form of commission council government is complex, decentralized, and irresponsible because of the large number of popularly elected, appointed, or ex-officio officers, boards, and commissions to whom are entrusted the supervision and control of certain municipal activities. The adoption of a simplified commission form or of the commission manager plan would result in the centralization of authority and responsibility, and provide for a more intelligent popular control. The separation of politics and of municipal administrative positions through the adoption of an adequate civil service system cannot be too strongly urged.

The second problem, that of metropolitanism, is difficult to solve because of the constitutional provisions governing parish consolidations, mergers, or boundary changes. If it is found impossible to extend the limits of New Orleans through the process of annexation, a special metropolitan area for police, fire, water, sanitation, health, or other purposes would do much to solve the present problem of coordinating those activities within the city with those immediately outside.

Throughout the constitutional history of Louisiana, which includes nine constitutions from 1812 through 1921, the unsatisfactory procedure of continued constitutional enlargement has been followed until Louisiana now has one of the longest and most detailed constitutions of any state in the Union. As a result, any significant change in either state or local government may be accomplished only through constitutional amendment or by means of a constitutional convention.

The extent and the importance of changes necessary in both state and local governments call for action by a constitutional convention. No satisfactory statutory solution is possible. It is strongly urged that the method of providing for local government in detail in the organic law of a state is dan-

gerous and fundamentally unsound. Emergencies wait on no popular movement for revision, and amendments become so numerous and changes so complex that the lay mind loses interest.

In spite of different conceptions of the place of the county or parish in our governmental system, southern states, and particularly Louisiana, have made this local unit a very important cog in the machinery of state administration, and have delegated to it vast powers for local purposes. Since Louisiana is still composed very largely of a rural element, the parish will remain an important institution for some time; and if the parish is to continue to administer to the local needs of its citizens and at the same time act as an administrative area for state purposes, more efficient and effective administrative methods and more attention to the allocation of functions are necessary in order to secure the full benefit of governmental service. At the same time attention must also be directed toward municipal organization, methods, and activities, for Louisiana municipalities are increasing in size and in population at the expense of many rural areas.

APPENDIX A

Parishes and Their Special Districts (1931)

Parish	R D	S D	D D	W D	N D	Total	Parish	R D	S D	D D	W D	N D	Total
Acadia	15	10	9	--	--	34	Brought Forward	217	232	98	2	1	544
Allen	5	9	1	--	--	15	Madison	---	1	---	--	--	1
Ascension	7	5	5	--	--	17	Morehouse	3	11	---	--	--	14
Assumption	4	1	5	--	--	10	Natchitoches	19	13	---	--	--	32
Avoyelles	6	14	7	--	--	27	Orleans	---	---	---	--	--	---
Beauregard	9	3	---	--	--	12	Ouachita	3	3	---	--	--	6
Bienville	8	11	---	--	--	19	Plaquemines	4	4	4	--	--	12
Bossier	5	7	2	--	--	14	Pointe Coupee	8	2	---	--	--	10
Caddo	---	---	---	--	--	---	Rapides	14	29	---	--	--	43
Calcasieu	9	9	8	--	1	27	Red River	5	7	---	--	--	12
Caldwell	4	3	---	--	--	7	Richland	13	11	---	--	--	24
Cameron	6	1	2	--	--	9	Sabine	11	25	---	--	--	36
Catahoula	9	7	---	--	--	16	St. Bernard	7	---	1	--	--	8
Claiborne	6	6	---	--	--	12	St. Charles	3	1	2	--	--	6
Concordia	---	8	---	--	--	8	St. Helena	8	8	---	--	--	16
DeSoto	10	12	---	--	--	22	St. James	---	2	---	--	--	2
E. Baton Rouge	21	4	3	--	--	28	St. John Baptist	---	1	---	--	--	1
E. Carroll	---	2	4	--	--	6	St. Landry	20	13	15	--	--	48
E. Feliciana	3	2	---	--	--	5	St. Martin	3	3	4	--	--	10
Evangeline	8	25	11	--	--	44	St. Mary	2	4	4	--	--	10
Franklin	7	9	---	--	--	16	St. Tammany	9	11	---	--	--	20
Grant	10	7	---	--	--	17	Tangipahoa	11	15	2	--	--	28
Iberia	---	4	10	--	--	14	Tensas	1	4	2	--	--	7
Iberville	2	3	3	--	--	8	Terrebonne	8	2	3	--	--	13
Jackson	2	11	---	--	--	13	Union	5	20	---	--	--	25
Jefferson	3	1	5	2	--	11	Vermilion	9	15	15	--	--	39
Jeff. Davis	18	14	9	--	--	41	Vernon	14	21	---	--	--	35
Lafayette	6	2	6	--	--	14	Washington	---	6	---	--	--	6
Lafourche	8	7	8	--	--	23	Webster	5	11	---	--	--	16
LaSalle	8	6	---	--	--	14	W. Baton Rouge	2	1	5	--	--	8
Lincoln	---	9	---	--	--	9	W. Carroll	6	6	---	--	--	12
Livingston	16	16	---	--	--	32	W. Feliciana	4	---	---	--	--	4
Carried Forward	215	228	98	2	1	544	Winn	1	13	---	--	--	14
Total								413	491	155	2	1	1062

RD—Road Districts. SD—School Districts. DD—Drainage Districts.

WD—Waterworks Districts. ND—Navigation Districts. Other types of districts were not available.

Caddo Parish information was not available.

School districts include parish-wide districts.

Road districts do not include parish-wide districts.

Many districts are for two purposes, maintenance and improvements, in which case they are each really two separate and distinct districts.

Taken from the *Annual Report of the La. State Tax Commission, 1931,* Pages 193-249.

Appendix B

Comparative Statement of Assessed Valuations and State and Local Taxes for all purposes, 1919-30.

Year	Assessed Valuations of all Property		Amount of Local Taxes		Amount of State Taxes		Total Taxes for all purposes	
1919	1,452,582,291	24	19,962,402	95	5,086,568	53	25,048,971	48
1920	1,698,564,216	00	31,121,467	57	8,492,748	71	39,614,216	28
1921	1,718,286,902	00	32,450,772	71	9,021,183	20	41,471,955	91
1922	1,561,580,784	00	31,348,149	58	8,275,996	67	39,624,146	25
1923	1,600,657,984	00	33,817,759	19	8,465,190	95	42,282,950	14
1924	1,645,427,974	00	35,933,339	55	8,678,750	83	44,612,090	38
1925	1,685,501,824	00	38,110,639	06	9,738,319	92	47,848,958	98
1926	1,717,877,125	00	39,944,564	48	9,946,057	06	49,890,621	54
1927	1,724,954,042	00	40,699,134	68	9,958,757	83	50,657,892	51
1928	1,733,552,714	00	40,923,558	30	9,995,941	19	50,919,499	49
1929	1,756,774,578	00	42,384,176	22	10,096,180	93	52,480,357	20
1930	1,746,869,796	00	42,704,289	36	10,040,990	20	52,745,279	56

This list does not include municipal taxes other than New Orleans.

These figures represent levies, not collections, and include taxes upon property only.

Annual Report of the State Tax Commission, 1931, Page 258.

Appendix C

DISTRIBUTION OF LOCAL TAXES 1920—1931

Year	Parish Tax	Road Taxes	School Taxes	Levee Taxes	Drainage Taxes	Miscellaneous	Totals
1920	$10,855,660.14	$4,885,544.66	$10,167,903.15	$3,172,487.52	$795,680.26	$1,244,191.84	$31,121,467.57
1921	11,506,049.79	4,840,757.96	9,882,053.63	3,234,604.84	959,967.24	2,027,339.25	32,450,772.71
1922	10,397,146.43	4,822,227.12	10,178,991.88	3,158,957.99	1,780,044.12	1,010,782.04	31,348,149.58
1923	10,945,602.20	5,056,005.22	11,346,163.07	3,473,460.98	1,842,240.55	1,154,287.17	33,817,759.19
1924	11,231,910.05	5,902,712.32	12,152,654.87	3,518,541.80	1,896,382.29	1,231,138.22	35,933,339.55
1925	11,550,423.75	6,254,911.11	13,029,313.53	3,614,523.74	1,972,021.87	1,689,445.06	38,110,639.06
1926	11,868,614.89	6,582,097.57	13,961,999.42	3,696,793.30	2,039,888.24	1,795,171.06	39,944,564.48
1927	12,245,635.59	6,873,134.50	13,864,948.52	3,793,789.87	2,058,770.96	1,862,855.24	40,699,134.68
1928	12,416,696.73	7,016,732.17	14,015,577.23	3,925,440.54	2,060,132.03	1,488,979.60	40,923,558.30
1929	12,405,213.54	7,070,461.20	14,634,152.93	3,970,292.66	2,193,990.53	2,110,064.86	42,384,176.22
1930	12,386,923.14	6,976,826.90	14,972,783.64	3,956,398.06	2,256,975.40	2,154,382.22	42,704,289.36
1931	11,694,628.26	5,891,238.58	12,871,310.52	3,828,992.89	2,145,238.60	2,037,573.69	38,468,982.54

These figures represent levies, not collections; and only upon the value of property, no other taxes being included. Does not include municipal taxes other than New Orleans.

Annual Report, La. State Tax Commission, 1931, Page 257.

Appendix D

ASSESSED VALUATIONS BY PARISHES—1925, 1927, 1929, 1931, 1933.

Parish	1925	1927	1929	1931	1933
Acadia	$ 24,973,472	$ 25,167,960	$ 24,796,900	$ 22,685,170	$ 21,160,702
Allen	10,810,391	9,472,292	8,170,853	6,747,571	5,327,435
Ascension	8,025,810	7,180,400	7,350,210	7,344,026	6,626,440
Assumption	7,779,960	6,328,330	6,068,530	5,788,790	5,306,290
Avoyelles	15,123,040	14,666,220	13,383,400	12,294,160	10,124,660
Beauregard	13,461,993	11,388,284	11,423,135	10,078,199	6,795,021
Bienville	9,979,303	9,680,117	10,185,348	8,733,207	7,529,593
Bossier	17,715,180	17,940,280	18,748,450	17,630,360	14,732,970
Caddo	158,257,160	162,971,340	166,971,770	146,804,515	118,106,380
Calcasieu	43,736,700	33,962,280	32,367,860	29,891,220	25,501,810
Caldwell	6,241,454	6,511,138	6,475,158	6,120,360	4,848,548
Cameron	4,588,810	4,570,710	5,135,390	5,310,800	4,792,360
Catahoula	6,729,973	7,313,173	7,049,775	6,503,007	5,022,118
Claiborne	24,058,089	22,980,870	20,634,295	18,851,537	14,158,125
Concordia	8,075,682	8,335,972	8,810,772	7,988,284	6,822,227
De Soto	20,109,010	18,202,440	17,916,780	16,399,320	11,697,040
E. Baton Rouge	109,171,626	111,789,138	116,973,363	119,089,573	105,034,150
E. Carroll	8,154,450	7,871,310	7,960,080	7,887,320	5,959,285
E. Feliciana	4,992,846	5,424,495	5,599,471	5,845,221	5,195,501
Evangeline	9,924,920	9,764,680	9,753,940	8,196,470	7,425,460
Franklin	13,989,660	13,808,860	14,521,184	14,193,761	10,578,848
Grant	8,546,696	8,028,044	7,576,582	6,755,618	4,750,146
Iberia	18,866,744	16,674,108	16,088,369	15,644,657	13,889,823
Iberville	13,462,047	11,561,675	11,535,974	11,342,133	10,126,603
Jackson	5,681,692	5,329,502	6,998,661	5,984,881	5,096,762
Jefferson	30,913,672	39,037,349	42,588,257	39,453,167	34,267,731
Jefferson Davis	15,418,140	15,245,650	15,222,420	13,970,940	12,984,630
Lafayette	19,650,582	18,008,076	17,710,165	17,865,970	16,454,275
Lafourche	12,925,860	11,461,900	12,289,620	11,867,436	10,689,660
LaSalle	7,674,843	8,443,487	7,689,735	6,403,138	4,175,616

Appendix D—(Continued)

ASSESSED VALUATIONS BY PARISHES 1925, 1927, 1929, 1931, 1933.

Parish	1925	1927	1929	1931	1933
Lincoln	8,449,904	8,599,117	9,080,763	8,948,803	7,603,295
Livingston	7,498,236	6,397,084	6,372,039	5,332,310	4,475,400
Madison	11,505,800	9,268,040	11,531,040	10,860,240	9,538,400
Morehouse	15,799,750	19,005,630	21,689,420	21,480,970	16,801,030
Natchitoches	20,175,524	19,269,353	19,262,040	16,602,934	13,590,409
Orleans	560,846,529	607,086,071	626,280,707	610,093,510	545,256,411
Ouachita	49,177,180	53,631,280	60,865,670	62,894,249	48,791,655
Plaquemines	5,153,845	5,295,533	6,388,721	5,884,881	4,970,105
Pointe Coupee	11,055,794	10,002,997	9,203,648	9,337,136	8,023,403
Rapides	36,977,390	36,492,290	35,460,510	33,093,980	27,509,720
Red River	9,657,400	9,129,089	7,532,383	6,280,980	5,050,390
Richland	11,329,148	12,000,178	13,088,557	16,021,086	13,976,551
Sabine	9,875,190	9,671,348	9,532,228	8,480,506	6,973,695
St. Bernard	16,350,535	16,528,364	16,565,540	15,149,918	12,566,725
St. Charles	18,005,040	18,810,610	16,942,780	13,683,690	11,118,090
St. Helena	2,335,765	2,377,912	2,360,174	2,146,497	1,834,520
St. James	10,419,460	9,099,070	8,994,160	8,705,150	7,419,880
St. John the Baptist	7,821,699	7,496,239	7,826,785	7,871,137	6,660,524
St. Landry	25,996,940	25,938,340	25,531,570	23,942,250	19,574,300
St. Martin	7,155,380	6,178,400	6,018,900	5,940,680	5,257,580
St. Mary	22,554,230	20,380,930	18,971,830	16,974,550	14,654,060
St. Tammany	13,914,499	17,150,578	16,322,518	13,052,388	9,802,449
Tangipahoa	22,045,960	22,607,130	21,703,100	20,066,730	16,947,220
Tensas	8,713,710	7,695,434	8,438,890	7,805,151	6,838,382
Terrebonne	11,157,940	10,042,410	11,171,120	10,853,515	9,973,281
Union	8,387,580	8,617,503	10,058,352	9,586,942	8,104,070
Vermilion	15,555,996	13,332,026	13,316,327	12,306,302	11,503,477
Vernon	22,282,158	17,743,646	13,914,530	9,527,813	5,985,314
Washington	17,205,079	17,056,890	17,609,010	16,159,787	13,158,910
Webster	23,177,813	22,650,544	21,582,463	18,624,450	14,815,597

Appendix D—(Continued)

ASSESSED VALUATIONS BY PARISHES 1925, 1927, 1929, 1931, 1933.

Parish	1925	1927	1929	1931	1933
W. Baton Rouge	6,780,462	9,194,986	7,652,253	8,074,345	7,337,984
W. Carroll	4,955,600	4,813,010	5,018,150	5,371,900	4,393,961
W. Feliciana	4,283,533	4,507,155	4,467,900	4,253,163	3,651,607
Winn	8,550,049	7,764,475	7,994,112	6,549,769	5,154,778
Totals	$1,685,501,824	$1,724,954,042	$1,756,774,578	$1,666,231,523	$1,424,496,980

Parishes decreased each 2 year period from 1925 to 1933, 23. Parishes had lower valuations in 1933 than in 1925, 57.
Parishes had higher valuations in 1933 than in 1925, 7.

Annual Report of the State Tax Commission, 1926-1933.

Appendix E

Final Budget for Year 1934 for East Baton Rouge Parish

Total Assessment Rolls for Year 1933	$102,000,000.00
Estimated Tax Revenues, Wards 1 and 2, year 1934	$ 64,312.50
Estimated Tax Revenues, Wards 3 (and*) 10, year 1934	228,375.00
Estimated Licenses	7,000.00
Total Estimated Revenues for the year 1934	$299,687.50
To be distributed as follows:	
Excess Revenue Bonds, Coupons—Com. Public Paving	$ 14,353.38
Excess Revenue Bonds, Coupons—Hard surface, Public Paving	5,756.88
Excess Revenue Bonds, Coupons—Good Roads	12,670.38
Bayou Fountain Drainage	3,000.00
Nelson Bros., Certificate and Interest	3,951.94
Rural Fire Department	8,280.00
Weller Fire Co.	3,000.00
Zachary Fire Co.	150.00
Roads and Bridges	95,000.00
CWA Projects, Special Account	5,000.00
Drainage No. 1	10,000.00
Drainage No. 2	10,000.00
Drainage City Canal	400.00
Drainage Brunot Canal	400.00
Garbage No. 1	3,600.00
Garbage No. 2	4,000.00
Maintenance Court House	10,000.00
Feeding Prisoners	12,000.00
Sheriff and Jail	6,500.00
Police Jury Office	10,000.00
Assessing Expense	4,500.00
Clerk of Court Expense	3,600.00
Health and Charities	7,000.00
Jury and Witnesses	6,500.00
Coroner's Fees and Certificates	4,500.00
Fuel, Lights and Water	5,000.00
Printing and Advertising	1,500.00
District Courts	5,000.00
Juvenile Courts	1,000.00
District Attorney's Office	4,000.00
Assistant District Attorney	2,850.00
Registrar of Voters	2,000.00
Parish Farm Agent	1,900.00
Parish Farm Bureau	150.00
Parish Club Agent	300.00
City Court Salaries	3,150.00
Beneficiaries	5,250.00
Baton Rouge Red Cross	3,500.00
New Orleans Charity Hospital	200.00
Lady of the Lake Sanitarium	1,500.00
Baton Rouge General Hospital	1,500.00
Public Library	500.00
Catholic Orphans	250.00
Colored Orphans	250.00
Protestant Orphans	250.00
Boy Scouts	300.00
Interest Account	8,500.00
American Legion	2,000.00
Traffic Bureau	500.00
Election Expense	2,000.00
Contingent	2,174.92
	$299,687.50

From *Baton Rouge State-Times*, Feb. 3, 1934

* "and" should obviously be replaced by "through".

Appendix F

ESTIMATED BUDGET OF RECEIPTS AND EXPENDITURES FOR THE YEAR 1933-1934

(Budget of East Baton Rouge Parish School Board)

RECEIPTS:

Cash in bank, July 1	$ 593.04	
Sheriff's settlement for Feb. (B. of B. R.)	3,361.87	
Sheriff's settlement for June (Rec'd July 8)	449.12	
Parish three-mill tax (1932)	25,000.00	
Parish three-mill tax (1933)	300,000.00	
Poll Taxes	15,000.00	
State Appropriation (1932) ($1.50 per educable)	29,941.50	
State Appropriation (1933) ($5.00 per educable)	99,805.00	
Interest and Rent, 16th Section Lands	514.18	
Miscellaneous	3,000.00	
Total		$477,664.71

EXPENDITURES:

Teachers' Salaries, White	283,067.47	
Teachers' Salaries, Negro	44,307.95	
Van Drivers' Salaries	44,795.00	
Janitors' Salaries	16,500.00	
Superintendent's Salary	4,250.00	
Supervisors' Salaries	5,950.00	
School Nurse's Salary	1,785.00	
Club Agent's Salary	2,550.00	
Office Assistant's Salaries	4,845.00	
School Nurse Expense	250.00	
Repairs and Construction	3,500.00	
Interest	2,300.00	
Manual Training and Dom. Science Supplies	1,000.00	
Office Expense	900.00	
Supplies and Equipment	9,000.00	
Fuel, lights and water	11,000.00	
Insurance	4,200.00	
Assessor's Commission	3,600.00	
Mileage and Per Diem	600.00	
Parish Rally	300.00	
Warrants and Interest	21.73	
Unpaid 1932 Salaries	27,891.49	
Unpaid 1932 bills	1,745.96	
Refund to Districts	1,022.91	
Contingent	2,282.20	
Total		$477,664.71

Reproduced from a copy of the budget signed by W. H. Perkins, Chairman of the Finance Committee, East Baton Rouge Parish School Board.

Appendix G

Louisiana Municipalities with Populations of Five Thousand or More:

Name	Parish	1920	1930
New Orleans	Orleans	387,219	458,762
Shreveport	Caddo	43,874	76,655
Baton Rouge	East Baton Rouge	21,782	30,729
Monroe	Ouachita	12,675	26,028
Alexandria	Rapides	17,510	23,025
Lake Charles	Calcasieu	13,088	15,791
Lafayette	Lafayette	7,855	14,635
Bogalusa	Washington	8,245	14,029
Gretna	Jefferson	7,197	9,584
New Iberia	Iberia	6,278	8,003
Crowley	Acadia	6,108	7,656
West Monroe	Ouachita	2,240	6,566
Houma	Terrebonne	5,160	6,531
Opelousas	St. Landry	4,437	6,299
Hammond	Tangipahoa	3,855	6,072
Morgan City	St. Mary	5,429	5,985
Minden	Webster	6,105	5,623
Plaquemine	Iberville	4,632	5,124
Bastrop	Morehouse	1,216	5,121

U. S. C. R., 1930, Pop., Vol. I, Page 465.

Appendix H

PARISH POPULATIONS

Parish	Created	1920	1930	Density per square mile	Area sq. m.
Acadia	1886	34,820	39,326	61	647
Allen	1912	18,382	15,261	23	663
Ascension	1897	22,155	18,438	63	291
Assumption	1807	17,912	15,990	33	484
Avoyelles	1807	35,300	34,926	41	847
Beauregard	1912	20,767	14,569	12	1172
Bienville	1848	20,977	23,789	28	848
Bossier	1843	22,266	28,388	33	863
Caddo	1838	83,265	124,670	142	880
Calcasieu	1840	32,807	41,963	39	1086
Caldwell	1838	9,514	10,430	20	531
Cameron	1870	3,952	6,054	4	1501
Catahoula	1808	11,074	12,451	17	718
Claiborne	1828	27,885	32,285	42	778
Concordia	1807	12,466	12,778	18	714
DeSoto	1853	29,376	31,016	36	872
E. Baton Rouge	1807	44,513	68,208	150	455
E. Carroll	1877	11,231	15,815	38	420
E. Feliciana	1811	17,487	17,449	38	464
Evangeline	1910	23,485	25,483	37	681
Franklin	1843	24,100	30,530	48	630
Grant	1869	14,403	15,709	23	683
Iberia	1868	26,855	28,192	48	589
Iberville	1807	26,806	24,638	42	584
Jackson	1845	14,486	13,808	24	578
Jefferson	1825	21,563	40,032	94	426
Jefferson Davis	1912	18,999	19,765	27	729
Lafayette	1852	30,841	38,827	139	279
Lafourche	1807	30,344	32,419	33	991
LaSalle	1909	9,856	11,668	18	640
Lincoln	1873	16,962	22,822	48	472
Livingston	1832	11,643	18,206	28	662
Madison	1839	10,829	14,829	23	650
Morehouse	1844	19,311	23,689	29	831
Natchitoches	1807	38,602	38,477	30	1289
Orleans	1807	387,219	458,762	2340	196
Ouachita	1807	30,319	54,337	85	642
Plaquemines	1807	10,194	9,608	10	1007
Pointe Coupee	1807	24,697	21,007	36	576
Rapides	1807	59,444	65,455	48	1370
Red River	1871	15,301	16,078	40	400
Richland	1868	20,860	26,374	47	565
Sabine	1843	20,713	24,110	24	1020
St. Bernard	1807	4,968	6,512	11	617
St. Charles	1807	8,586	12,111	41	295
St. Helena	1811	8,427	8,492	20	420
St. James	1807	21,228	15,338	60	254
St. John the Baptist	1807	11,896	14,078	61	231
St. Landry	1807	51,697	60,074	62	964
St. Martin	1811	21,990	21,767	41	525
St. Mary	1811	30,754	29,397	47	632
St. Tammany	1811	20,645	20,929	23	906
Tangipahoa	1869	31,440	46,227	59	790

Appendix H—(Continued)

PARISH POPULATIONS

Parish	Created	1920	1930	Density per square mile	Area sq. m.
Tensas	1842	12,085	15,096	24	632
Terrebonne	1822	26,974	29,816	17	1756
Union	1830	19,621	20,731	23	918
Vermilion	1844	26,482	33,684	28	1213
Vernon	1871	20,483	20,047	15	1367
Washington	1819	24,164	29,904	46	655
Webster	1871	24,707	29,458	48	609
W. Baton Rouge	1907	11,092	19,716	92	214
W. Carroll	1877	8,857	13,895	37	366
W. Feliciana	1811	12,303	10,924	31	352
Winn	1852	16,119	14,766	15	969

U. S. C. R., 1930, Pop., Vol. III, Part I, Page 974 and Vol. I, Page 456, and *Report of the Secretary of State*, 1929, Pages 59 ff. and Jan. 1, 1933, Pages 57-130.

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